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Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur of the Human Rights Council on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, submitted in accordance with Human Rights Council resolution 26/8.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

In her 2015 report to the Human Rights Council (A/HRC/29/38), the Special Rapporteur of the Human Rights Council on trafficking in persons, especially women and children, identified the linkage between trafficking in persons and conflict as one of the areas under her mandate on which she intended to focus and to carry out further research.

In follow-up to her report presented to the Human Rights Council at its twenty-sixth session (A/HRC/32/41), the present report raises international awareness of the forms and nature of trafficking related to the complex situation of conflict. The first section provides the contextual background and identifies trafficking in persons as an increasingly common feature of modern conflict.

The second section focuses on the contextual perspective by considering the most common forms of trafficking in conflict from three perspectives: (a) trafficking of persons fleeing conflict, addressing the situation of trafficking of persons internally displaced by conflict and that of refugees and asylum seekers fleeing conflict; (b) trafficking during conflict, which investigates trafficking in persons, including boys, girls and migrants, for military service and for purposes of sexual and labour exploitation; and (c) trafficking in post-conflict situations, including trafficking involving peacekeepers.

Lastly, the report offers recommendations to address trafficking in conflict and post-conflict situations in collaboration with States, the United Nations, civil society and the international community in relation to: (a) trafficking of persons in conflict areas or trafficking of persons fleeing conflict; (b) protecting children from trafficking; (c) strengthening responses to address trafficking of women and girls for purposes of sexual exploitation in conflict and post-conflict situations; (d) prevention of trafficking in persons for labour exploitation in conflict and post-conflict areas; and (e) anti-trafficking activities in peacekeeping operations.

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I. Introduction

1. The present report, submitted to the General Assembly pursuant to Human Rights Council resolution 26/8, outlines the activities of the Special Rapporteur of the Human Rights Council on trafficking in persons, especially women and children. The thematic focus of the report assesses trafficking in persons in conflict and post-conflict situations with a view to protecting victims of trafficking and people at risk of trafficking, especially women and children.

II. Activities of the Special Rapporteur

A. Participation in conferences and consultations[1]

2. On 2 June 2016, the Special Rapporteur addressed the open debate of the Security Council on "Conflict-related sexual violence: responding to human trafficking in situations of conflict-related sexual violence".

3. On 3 June, she took part in a judges' summit on human trafficking and organized crime organized by the Pontifical Academy of Sciences.

4. On 6 June, she participated in a webinar organized by the International Centre for Migration Policy Development on the assessment of the impact of the war in the Syrian Arab Republic and the refugee crisis on trafficking in persons.

5. From 8 to 10 June, the Special Rapporteur took part in the annual meeting of mandate holders of the Human Rights Council special procedures in Geneva.

6. On 13 June, the Special Rapporteur presented her thematic report to the Human Right Council at its 32nd session.

7. On 14 June, she convened a side event on the impact of trafficking on persons fleeing conflict on the margins of the thirty-second session of the Human Rights Council.

8. On 14 July, the Special Rapporteur convened an expert meeting with representatives of multi-stakeholder initiatives and industry coalitions working on tackling the exploitation of workers in supply chains, including an exchange on good practices and challenges in the implementation of measures to combat human trafficking and forced labour in voluntary standards, as well as on lessons learned in the adoption of due diligence measures, monitoring compliance and the establishment of grievance mechanisms.

9. On 30 July, World Day against Trafficking in Persons, the Special Rapporteur issued a press release urging all States to protect people from trafficking, particularly appealing to countries hosting people fleeing conflict, who may be victims or potential victims of trafficking.

[1] For the activities undertaken by the Special Rapporteur between October 2015 and April 2016, see A/HRC/32/41.

B. Country visits

10. The country visit of the Special Rapporteur to Brazil, scheduled for 10 to 19 May 2016, was postponed until 25 January to 3 February 2017, pending confirmation by the Government.

III. Thematic analysis: Trafficking in persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children

A. Introduction

11. In follow-up to her report presented at the twenty-sixth session of the Human Rights Council (A/HRC/32/41), the Special Rapporteur wishes to draw the attention of the General Assembly to her assessment of the various ways in which trafficking in persons and conflict interact and intersect, as well as to present additional feedback from Member States and other stakeholders received after her interactive dialogue with the Council. The report to the twenty-sixth session of the Council was well received: 44 Member States and 15 non-State actors intervened and shared their experiences regarding prevention and protections of actual and potential victims. Some recommendations were also exchanged on efforts to address this phenomenon.

12. The report, which includes a number of examples of human trafficking and conflict taken from actual conflict and post-conflict situations, has also benefited from the input of Members States during the open debate of the Security Council on "Conflict-related sexual violence: responding to human trafficking in situations of conflict-related sexual violence", held on 2 June 2016, during the presidency of France, at which the Special Rapporteur made an intervention (S/PV.7704). The statements delivered by Member States reflect the urgent need felt by the members of the Council to address the issue of human trafficking for the purpose of sexual exploitation related to conflict. The expert has also been encouraged by the appointment, on 16 September 2016, of Nadia Murad Basee Taha as Goodwill Ambassador for the dignity of survivors of human trafficking, the first time that a survivor of atrocities has been appointed to such a position. Ms. Taha briefed the Council on the atrocities, including trafficking in persons faced by the Yazidi, particularly women and children, at its meeting on 16 December 2015, at which the Council addressed the issue of human trafficking in conflict for the first time.

13. The preparation of the report also benefited from the continued collaboration between the Special Rapporteur and other institutions on this topic, including Caritas International, the International Centre for Migration Policy Development, the International Organization for Migration (IOM), the Migrants in Countries of Crisis Initiative, the United Nations Organization on Drugs and Crime (UNODC) and the United Nations University, all of whom have worked to pave the way on this issue. Since the identification of the linkage between human trafficking and conflict as a focus of concern under her mandate in her report to the twenty-ninth session of the Human Rights Council (A/HRC/29/38), this issue has garnered increased interest, as evidenced by: (a) the statement by the President of the Security Council on 16 December 2015 (S/PRST/2015/25) requesting, inter alia, that the Secretary-

General report back to the Council on progress made to improve the implementation of existing mechanisms countering trafficking in persons; (b) the interactive dialogue held by the Special Rapporteur with Member States during the thirty-second session of the Human Rights Council in June 2016; and the adoption by the Human Rights Council of resolution 32/3 on trafficking in persons, especially women and children: protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations.

B. Context and identification of the problem

14. Human trafficking is an increasingly common feature of modern conflict, whether national or international. Existing forms of trafficking and vulnerabilities ranging from gender-based violence to discrimination to lack of economic opportunities are exacerbated before, during and after conflict. Furthermore, conflict tends to fuel impunity, the breakdown of law and order and the destruction of institutions and communities, which foster conditions within which trafficking will flourish, often beyond the point at which hostilities have ceased. Lack of access to safe and legal migration options forces many persons fleeing conflict to use the services of illegal facilitators, increasing their exposure to exploitation, including trafficking.

15. In order to provide a description and to establish the nature and scope of the problem, in this report the Special Rapporteur presents the most common forms of trafficking in conflict from three perspectives: (a) trafficking of persons fleeing conflict; (b) trafficking during conflict; and (c) trafficking in post-conflict situations. While overlap between these three circumstances is common in practice, it is possible to identify particular features or issues related to trafficking in persons associated with each in order to understand how different situations and vulnerabilities arise and how they can be addressed.

C. Trafficking of persons fleeing conflict

16. Individuals fleeing anticipated or actual conflict, or the aftermath of conflict, are vulnerable to trafficking. The pressure to move is often urgent and intense, leading people to take risks that would be unacceptable under normal circumstances. Conflict weakens State structures, removes protections and enables criminal networks to operate more freely, including across borders. Sometimes trafficking will occur within the conflict zone or in another part of an affected country to which the victims have been displaced. Increasingly, persons who have escaped conflict by fleeing to another country as part of a larger, mixed migration process have become victims of trafficking at some point in their journey or at their destination.

1. Trafficking of persons internally displaced by conflict

17. Internal displacement due to conflict and persecution affects almost 40 million people.[2] Forced displacement can increase the risk of trafficking by weakening or

[2] Office of the United Nations High Commissioner for Refugees (UNHCR), "World at War: Global Trends: Forced Displacement in 2014".

destroying family support structures, community bonds and self-protection mechanisms that might otherwise serve as a buffer against human trafficking. Because internally displaced persons often lack documentation and have limited access to education, resources and self-reliance opportunities, they may be particularly vulnerable to traffickers, who appear to offer life-saving access to employment and other opportunities. Internally displaced persons who fear for their lives and wish to seek protection abroad can also fall prey to traffickers claiming to offer them a route to safety.

18. Criminal networks specifically target impoverished communities, including the internally displaced, in order to exploit their vulnerabilities. Poor and displaced families may entrust the care of their children to traffickers who promise to provide them with education or skills training, but ultimately exploit them for the purposes of prostitution, forced labour and domestic servitude, or irregular adoption.[3] Internally displaced women and girls are often disproportionately affected by loss of livelihoods during displacement (A/HRC/23/44, para. 46). In Jordan for example, Syrian refugees and asylum seekers, including children as young as 3 years old, are lured to work illegally for low wages to sustain families, which puts them at risk of trafficking (A/HRC/32/41/Add.1, para. 11).

19. Conflict-related violence, such as sexual violence, can itself be a driver of forced internal displacement, which in turn increases vulnerability to further exploitation, including through trafficking. For instance, in Colombia, sexual violence by armed groups has forced ethnic minority women and girls in remote rural areas away from their communities and placed them at greater risk of trafficking within the country as well as overseas.[4] Additionally in Myanmar, worsening security situations and overcrowded camps with inadequate basic services cause some internally displaced persons along the border between Kachin State and China to risk crossing borders into China in an irregular manner in search of employment, putting themselves at high risk of exploitation because of their lack of legal status.[5] Military attacks on camps further worsen displacement and cause undocumented internally displaced persons, including women and unaccompanied children, to flee their camps, exposing them to the risk of being exploited or trafficked. In contexts such as South Sudan, the Sudan and the Syrian Arab Republic, parties to conflict took advantage of the vulnerability of displaced and refugee populations to recruit children and commit crimes, including sexual violence and abduction.[6] Security forces in the Democratic Republic of Congo have trafficked displaced persons as forced labourers in mines.[7]

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[3] UNHCR, "Handbook for the Protection of Internally Displaced Persons", Action Sheet 7, "Human Trafficking" (http://www.unhcr.org/4794b4322.pdf).

[4] S/2015/203, para. 20. See also Luz Estella Nagel, "How conflict and displacement fuel human trafficking and abuse of vulnerable groups: the case of Colombia and opportunities for real action and innovative solutions", *Groningen Journal of International Law*, vol. 1, No. 2 (2013); Sonja Wolte, "Armed conflict and trafficking in women", German Agency for Technical Cooperation, 2004; and IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

[5] Kachin Women's Association Thailand, "Pushed to the brink: conflict and human trafficking on the Kachin-China border", 2013.

[6] A/70/836-S/2016/360, para. 18.

[7] See Department of State, United States of America, "Trafficking in Persons Report", 2015.

2. Trafficking of refugees and asylum seekers fleeing conflict

20. Increasingly restrictive and exclusionary immigration policies, including criminalization and detention of irregular migrants, insufficient channels for regular migration and family reunification and lack of regular access to the labour market for asylum seekers, refugees and migrants further contribute to an increase in the exploitation of migrants, including through trafficking. This forces migrants, including asylum seekers and refugees fleeing conflict, into the arms of those who can help them circumvent controls.

21. Throughout their journey and at their destination, migrants, including refugees and asylum seekers forced to flee their country because of armed conflict, are highly vulnerable to physical violence, sexual assault, extortion and trafficking, as well as detention by national authorities.[8] Incidence of trafficking and exploitation, primarily among Afghan, Syrian and Iraqi men and boys with low educational levels and travelling alone, is identified among irregular migrants arriving in Europe along the western Balkan routes.[9]

22. The journey of female migrants and unaccompanied children is particularly hazardous. Thousands of such women and children have disappeared, presumably abducted for purposes of trafficking related exploitation.[10] Sudanese and Somalian refugees and asylum seekers fleeing conflict, including numerous unaccompanied children, have been kidnapped or lured from refugee camps or while travelling, sold and subsequently held captive in Libya or in the Sinai desert for purposes of exploitation through extortion.[11] People of the Rohingya Muslim minority fleeing persecution in Myanmar take maritime and overland journeys, often through Thailand, to reach Malaysia as irregular migrants. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations, ending up in bonded labour to repay the debts incurred for their transport. Others are held captive and abused in Malaysia until ransom is paid by their relatives.[12] Since 2011, an increased number of Syrian refugees have been trafficked for purposes of labour exploitation in the agricultural, industry, manufacturing, catering and informal sectors in Jordan, Lebanon and Turkey.[13] Refugees living in such conditions are forced to accept exploitative practices such as longer working hours, lower salaries

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[8] Regional Mixed Migration Secretariat, "Abused and Abducted: The Plight of Female Migrants from the Horn of Africa in Yemen", Mixed Migration Research Series, Study 7, 2014.

[9] International Organization for Migration (IOM), "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

[10] See Regional Mixed Migration Secretariat, "Abused and Abducted: The Plight of Female Migrants from the Horn of Africa in Yemen", Mixed Migration Research Series, Study 7, 2014 (http://www.regionalmms.org/images/ResearchInitiatives/Abused___Abducted_RMMS.pdf); Human Rights Watch, "Yemen's torture camps: abuse of migrants by human traffickers in a climate of impunity", 2014 (https://www.hrw.org/report/2014/05/25/yemens-torture-camps/abuse-migrants-human-traffickers-climate-impunity); and IOM, Migrants in Countries of Crisis Initiative, "Responding to Human Trafficking and Exploitation in Times of Crisis: Reducing the Vulnerabilities of Migrants in Preparedness, Response and Recovery Efforts", Issue Brief, 2016.

[11] UNHCR, "Smuggling and Trafficking from the East and Horn of Africa: Progress Report", 2013.

[12] A/HRC/29/38/Add.1, para.19, and A/HRC/32/41, para 24.

[13] See A/HRC/32/41/Add.1; International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons — A Study of Syria, Turkey, Lebanon, Jordan and Iraq*, Vienna, 2015; and IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", 2015.

in exchange of meagre wages, inadequate shelter and other exploitative arrangements.

23. After fleeing conflict, children may be compelled to work to sustain themselves and/or to support their families. Unaccompanied children often have no choice but to work to meet their basic needs. Iraqi and Syrian refugee children in Lebanon, for example, work in textile factories, construction, the food service industry, agricultural labour or as street vendors in conditions amounting to forced labour. Moreover, there appear to be organized systems within refugee camps for making these work arrangements.[14] In Iraq and Lebanon, Syrian refugee children are trafficked for purposes of exploitation, including begging and selling items on the street.[15] In May 2015, at least 1,500 children, 75 per cent of whom were Syrian, were reported as begging or working as street vendors in and around Beirut, working excessive hours to earn income for their families.[16] These worst forms of child labour, which often mask other forms of exploitation, such as trafficking for forced labour and sexual exploitation, have negative consequences on children's health and education. Unaccompanied children from Afghanistan and the Sudan in refugee camps in Calais and Dunkirk in France are trafficked for sexual exploitation and forced to commit crimes, including stealing or selling drugs, by traffickers who promise them passage to the United Kingdom of Great Britain and Northern Ireland.[17]

24. Conflict and post-conflict situations increase the vulnerability of those fleeing conflict to trafficking for purposes of organ removal, and enables impunity for exploiters. A system for collecting and selling human organs from fighters, captives and hostages is allegedly established by armed opposition groups, especially the Islamic State of Iraq and the Levant (ISIL) and affiliated armed groups, as a means of financing war.[18] Moreover, there is evidence that migrants fleeing conflict in the Sudan have been trafficked for organ harvesting in Egypt. Palestinians from the Syrian Arab Republic, who use smugglers to travel to Europe through the Sudan and Libya, have also become victims of trafficking for organ removal when they found themselves unable to pay the ransom for their kidnapping.[19] In addition, medical practitioners from post-conflict Kosovo[20] were found to be involved in the trafficking of victims from the Republic of Moldova, the Russian Federation and Turkey to Kosovo for the purpose of organ removal (A/68/256, para. 29).

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[14] See Secours Catholique-Caritas France, Geneviève Colas and Olivier Peyroux, "Trafficking in human beings in conflict and post-conflict situations" July 2016.

[15] See, for example UNICEF and Save the Children, "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", July 2015; Secours Catholique-Caritas France, Geneviève Colas and Olivier Peyroux, "Trafficking in human beings in conflict and post-conflict situations", 2015; and IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

[16] See Secours Catholique-Caritas France, Geneviève Colas and Olivier Peyroux, "Trafficking in human beings in conflict and post-conflict situations" 2015.

[17] United Nations Children's Fund (UNICEF), "Neither safe nor sound: Unaccompanied children on the coastline of the English Channel and the North Sea", 2016.

[18] See IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

[19] International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons — A Study of Syria, Turkey, Lebanon, Jordan and Iraq*, Vienna, 2015.

[20] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

D. Trafficking during conflict

25. Individuals and communities caught up in conflict are vulnerable to a range of human rights violations. Pre-existing conditions and vulnerabilities, such as structural gender-based and other forms of discrimination affecting women, children and non-citizens, are exacerbated during conflict as opportunities for exploitation increase and protections break down. Factors such as the sponsorship system (*kafala*), which is intended to regulate the employer and employee relations in some countries, give employers excessive power and control over migrant workers, increasing their risk of being trafficked. For instance the rescue of trafficked Kenyan female domestic workers in Libya during the conflict in that country posed challenges because their employers, who were responsible for authorizing the workers' exit permits, had fled the country with the their travel documents.[21] Similarly, during the armed conflict in Lebanon in 2006, some of the 300,000 domestic workers from Sri Lanka, Ethiopia and the Philippines who were left behind when their employers were evacuated became vulnerable to traffickers who offered alternative options to livelihood and resident status.[22]

26. Trafficking in persons is not only a consequence of conflict, it can also fuel conflict, as situations of conflict can be prolonged by actors who take advantage of situations of lawlessness to reap personal gain through lucrative activities such as trafficking.

27. In the section below, the Special Rapporteur will examine the issue of the trafficking of children into military service — one of the worst forms of child labour, as well as their trafficking for sexual and labour exploitation during conflict involving all persons, including boys, girls and adult migrants.

1. Trafficking of children into military service

28. The United Nations Children's Fund (UNICEF) estimates that some 300,000 boys and girls under the age of 18 are involved in more than 30 conflicts worldwide.[23] One in three children in the Kurdistan region of Iraq has been approached for forced or compulsory recruitment in armed conflict.[24] Moreover, children are especially vulnerable to being trafficked into military service by Government armed forces, paramilitary groups and rebel groups if they are separated from their families, are displaced from their homes, live in combat areas or have limited access to education.[25]

29. Children trafficked into forced military service perform a variety of combatant and supportive roles. Many children, typically boys, are forcibly recruited or kidnapped for use by armed militias in ongoing conflicts.[26] Children are also used as

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[21] See IOM/Migrants in Countries in Crisis Initiative, "Responding to Human Trafficking and Exploitation in Times of Crisis", Issue Brief, January 2016.

[22] See https://www.unodc.org/unodc/en/human-trafficking/prevention.html.

[23] UNICEF Fact sheet, "Child soldiers" (available from: http://internalvoices.org/wp-content/uploads/2013/04/childsoldiers.pdf).

[24] UNICEF and Save the Children, "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", July 2015.

[25] UNICEF Fact sheet: Child soldiers" (available from http://internalvoices.org/wp-content/uploads/2013/04/childsoldiers.pdf).

[26] See Secours Catholique-Caritas France, Geneviève Colas and Olivier Peyroux, "Trafficking in human beings in conflict and post-conflict situations" 2015.

suicide bombers and human shields.[27] For instance in Iraq, ISIL and other extremist groups traffic boys and young men, including members of the Yazidi minority, into armed conflict, radicalize them to commit terrorist acts using deception, death threats or the offer of money and women as rewards.[28] Others are compelled to work as porters, cooks, guards and messengers or are forced to commit crimes, such as looting and physical and sexual violence. Boys and girls in these situations are often sexually abused and may also be forced to take drugs.[29]

30. While the forcible recruitment of children often involves abduction or coercion, recruiters also appeal to notions of martyrdom or social and economic factors or employ trickery or indoctrination to enlist children. There are instances where the Internet, particularly social media, has been used by extremist groups in a deceptive manner to exploit the vulnerability of educated young children from middle class families in Western countries in order to recruit them.[30]

31. It is estimated that 10 to 30 per cent of children in fighting forces are female.[31] Girls who are forcibly recruited or abducted into military service typically face forced domestic labour and sexual violence and exploitation such as forced marriage and/or sexual slavery (see paras. 32-35 below). It is important to acknowledge that while violence and exploitation are often defining aspects of the female experience of conflict, this is not always the case. Young women and girls have also been involved in trafficking by deceiving other girls and boys into joining armed conflict, using the Internet and social media.

2. Trafficking of women and girls for sexual exploitation

32. Conflict-related sexual violence takes many forms. Women and girls seeking to survive in conflict zones are often compelled to exchange sexual services and even to "marry" for food, shelter, protection or safe passage.[32] UNHCR has affirmed that women in conflict situations are vulnerable to a range of discriminatory practices that exacerbate their dependence (for example, receiving smaller food rations or not having ration cards or other identity documents in their own name) and are disproportionately exposed to sexual violence.[33] For women and girls abducted into military service, sexual assault is often a feature of their experience. Rape has been used as a tactic of war to humiliate and weaken the morale of the enemy, ethnically cleanse the population, destabilize communities and force

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[27] See Department of State, United States of America, "Trafficking in Persons Report", 2015.

[28] See International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons — A Study of Syria, Turkey, Lebanon, Jordan and Iraq*, Vienna, 2015.

[29] See Sonja Wolte, "Armed conflict and trafficking in women".

[30] See Ashley Binetti, "A new frontier: human trafficking and ISIS's recruitment of women from the West", Information2Action, Georgetown Institute for Women, Peace and Security, 2015; Brigette L. Nacos, "Young Western Women, Fandom, and ISIS", *E-International Relations*, 5 May 2015; Lisa Blaker, "The Islamic State's use of social media", *Military Cyber Affairs*, vol. 1, No. 1, 2015; and Scott Gates and Sukanya Podder, "Social Media, Recruitment, Allegiance and the Islamic State", *Perspectives on Terrorism*, vol. 9, No. 4, 2015.

[31] Child Soldiers International, "A dangerous refuge", July 2015.

[32] See Sonja Wolte, "Armed conflict and trafficking in women", and IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

[33] See Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding*, United Nations Development Fund for Women (UNIFEM), New York, 2002.

civilians to flee.[34] Widespread or systematic sexual assault by government and/or opposition or rebel forces has been documented in multiple modern conflicts, including in the reports of the Secretary-General on conflict-related sexual violence, issued annually since 2009, in which he has identified incidents and patterns of sexual violence in conflict-affected countries employed by parties to armed conflict, primarily against women and girls but also against boys and men (see S/2015/203).

33. The trafficking of women and girls for sexual exploitation, including sexual slavery, forced marriage, forced prostitution and forced pregnancy, features within the broader picture of sexual violence perpetrated against the civilian population during and in the wake of conflicts. The nexus between trafficking in persons and sexual violence is further affirmed in the statement of the President of the Security Council of 16 December 2015 (S/PRST/2015/25), which underscores the urgency of efforts to deter, detect and disrupt trafficking in persons, including by terrorist and violent extremist groups. Although some form of abduction has been a feature of armed conflicts in the past, recently there has been an egregious pattern of abducting women and girls from their homes or schools in conflict-affected settings. These women and girls may subsequently be forced to marry and/or serve as sex slaves. Such exploitation, which in some cases also involves trafficking for forced marriage and sexual enslavement by extremist groups such as ISIS, Boko Haram and their affiliates, is believed to be a strategy to generate revenue as well as to recruit, reward and retain fighters. For instance, it is reported that Yazidi women and girls are being trafficked for sexual enslavement by ISIS between Iraq and the Syrian Arab Republic (A/HRC/32/CRP.2, paras. 127 and 174). In order to prevent such abductions, families are reported to be confining women and girls and removing girls from school (S/2015/203, para. 61).

34. Trafficking for the purpose of sexual exploitation is perpetrated not only by organized criminal groups. For instance, Syrian refugee women and girls may be trafficked for sexual exploitation through the practice of "temporary" or child and/or forced marriages. They may be forcibly married by their parents, who view such arrangements as a way of securing their daughters safety and ensuring the family's livelihood through the bride price. Once married, such wives are likely to end up in a situation of sexual and domestic exploitation by a spouse whom they followed abroad (A/HRC/32/41/Add.1). Trafficking for forced prostitution through marriages with foreign men who then force their "brides" into prostitution in another country is also common.

35. Survivors of trafficking, sexual slavery and other forms of sexual violence perpetrated during periods of armed conflict rarely receive the assistance they need to reintegrate into society. Too often, survivors face discrimination and stigma in their families and in the wider community, which may make them vulnerable to being retrafficked, further stalling their rehabilitation and reintegration. Stigmatization as well as deficient judicial and legal systems typically impede access to justice for survivors. Access to justice is further impeded by discriminatory laws and regulations. Additionally, sexual and reproductive health services, trauma counselling and reintegration support, such as education and livelihood assistance, are severely

[34] Security Council resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2242 (2015). See also United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Women2000: Sexual Violence and Armed Conflict: United Nations Response", 1998.

limited in conflict and post-conflict areas, leaving the physical and psychological health needs of victims unmet.

3. Trafficking of migrant workers into conflict zones

36. Migrant workers in conflict zones have a heightened risk of exposure to human trafficking. Recruitment agents and their intermediaries in countries of origin deceive workers about their country of final destination, the nature of the work and their working and living conditions and, unknowingly, such workers find themselves forced into employment in conflict-affected countries. For instance, a man from the Philippines was allegedly promised employment in Turkey, but was instead trafficked for labour exploitation to the Kurdistan region of Iraq.[35]

37. Moreover, migrant workers can also be trafficked into conflict zones by private contractors employed by States and their military forces to support large-scale military operations. While not all situations of contracting and subcontracting involve trafficking for labour exploitation, there have been cases where large firms that hold the prime contract with States and their militaries hire migrant workers through smaller subcontractors or local employment agencies to perform certain tasks, including cleaning, construction, cooking and serving and haircutting.

38. A pattern of deceptive recruitment, excessive recruitment fees, confiscation of workers' passports, dangerous working conditions and poor living conditions, debt bondage, underpayment or non-payment of wages and other types of abuse and exploitation are, in some cases, indicative of trafficking in persons for labour exploitation within the scope of the international legal definition. Examples include the exploitative recruitment of South Asian migrant workers to provide service at military worksites in conflict areas in the Middle East. Subcontractors deceive workers about the identity of the country where they will be working, which is more dangerous than the promised country of destination, as well as about the type of work they will be doing, and also withhold workers' passports to prevent them from fleeing the conflict zone where they were deceived into working.[36]

E. Trafficking in post-conflict situations

39. Post-conflict situations are typically characterized by absent or dysfunctional justice and law enforcement institutions, and consequently by: a climate of impunity that fosters violent criminal networks; high levels of poverty and lack of basic resources; significant inequality; large populations of highly vulnerable individuals (displaced persons, returnees, widows, unaccompanied children); fractured communities and lack of trust; and militarized societies tolerant of extreme levels of violence. These features render men, women and children in post-conflict societies especially vulnerable to trafficking.

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[35] See International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons*, Vienna, 2015.

[36] See American Civil Liberties Union and Allard K. Lowenstein, "Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors" International Human Rights Clinic, Yale Law School, 2012; and IOM/Migrants in Countries in Crisis Initiative, "Responding to Human Trafficking and Exploitation in Times of Crisis" Issue Brief, 2016.

40. In the post-conflict climate, the vulnerability of women and girls to trafficking-related exploitation is heightened by their relative lack of access to resources, education, personal documentation and protection. In fact it is common for societies to experience a rise in trafficking for sexual exploitation (for example, forced prostitution) as well as other forms of gender-based violence, such as rape and domestic violence, after a conflict has formally come to an end.[37] However, these crimes are underreported due, inter alia, to stigmatization of survivors and inadequate services for them. Moreover, the demand for cheap labour in the aftermath of crises, when countries and businesses start to rebuild, could also lead to trafficking. This was experienced by Ukrainian construction workers who were trafficked for labour exploitation in Iraq.[38]

Trafficking involving peacekeepers

41. In 2015, more than 123,000 United Nations military, police and civilians were deployed in 16 operations around the world to prevent or contain fighting; stabilize post-conflict zones; help implement peace accords; and assist in democratic transitions (see A/70/95-S/2015/446). Other intergovernmental bodies, including the African Union and the North Atlantic Treaty Organization (NATO), also have large numbers of personnel on the ground supporting the maintenance of peace and security, including in post-conflict situations.

42. Peacekeeping forces play a vital role in protecting communities, including women and children, from the violence and exploitation that is a common feature of post-conflict situations. However, foreign forces can also exacerbate, and sometimes even contribute directly to, such harm. A large, militarized and predominantly male international presence can fuel the demand for goods and services produced through trafficking for labour and/or sexual exploitation.

43. A 2010 study, using Haiti, Kosovo and Sierra Leone as case studies, demonstrates the link between the introduction of peacekeeping forces into a conflict zone and the subsequent increase in human trafficking as a direct result of an increase in demand for sexual services.[39] The relationship between deployed troops and the demand for trafficked women was also unmistakable in the countries of the former Yugoslavia, where demands for sexual services created by peacekeepers led to an expansion of the sex industry, with many of the women trafficked and sexually exploited forced to work in brothels established expressly to

[37] See Elisabeth Rehn and Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding*, United Nations Development Fund for Women (UNIFEM), New York, 2002; Rashida Manjoo and Caleigh McRaith, "Gender-Based Violence and Justice in Conflict and Post-Conflict Areas", *Cornell International Law Journal*, vol. 44, No. 1, 2011; and *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325*, UN-Women, 2015.

[38] See IOM/Migrants in Countries in Crisis Initiative, "Responding to Human Trafficking and Exploitation in Times of Crisis", Issue Brief, 2016.

[39] Charles A. Smith and Brandon Miller-de la Cuesta, "Human Trafficking in Conflict Zones: The Role of Peacekeepers in the Formation of Networks", *Human Rights Review*, vol. 12, No. 3, 2011.

serve United Nations peacekeepers.[40] The past involvement of military, peacekeeping, humanitarian and other international personnel in trafficking and related exploitation during post-conflict periods has been documented in multiple countries, including Angola, Bosnia and Herzegovina, Cambodia, the Democratic Republic of the Congo, East Timor, Kosovo,[41] Liberia, Mozambique, Sierra Leone and Somalia.[42]

44. International personnel are generally deployed to conflict or immediate post-conflict situations in which populations are vulnerable and where basic institutions, including law enforcement, are fragile or non-existent (see A/59/710). The increased demand for sexual services as a result of the presence of international personnel, including peacekeepers, further exacerbates women's social and economic vulnerabilities in a fragile post-conflict society and promotes an economy of exploitation, which can support trafficking networks in the longer term. For instance, the recent cases of sexual abuse and exploitation by peacekeepers in the Central African Republic,[43] who prey on the economic vulnerability of children and women as well as on their need for assistance and protection, could, in some cases, be linked to trafficking for the purpose of sexual exploitation.

F. International legal framework

45. An overview of the international legal framework around trafficking in conflict and post-conflict situations, which draws on multiple branches of law, including transnational criminal law, international humanitarian law, international criminal law, refugee law and human rights law, is provided by the Special Rapporteur in her report to the thirty-second session of the Human Rights Council (A/HRC/32/41, paras. 44-55). The report also covers the laws and instruments that address specific violations related to trafficking in conflict and post-conflict situations.

46. In the above-mentioned report, the Special Rapporteur also identified the entitlement of victims of trafficking to due diligence protection and prevention against trafficking in persons by States, whether in times of conflict or otherwise (A/HRC/32/41, para. 56). These rights include: the right to be identified; the right to

[40] See E/CN.4/2006/62/Add.2; Human Rights Watch, "Bosnia and Herzegovina — Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution", 2002; Keith Allred, "Combating human trafficking", *NATO Review* (2006); and Elisabeth Rehn and Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding*, United Nations Development Fund for Women (UNIFEM), New York, 2002.

[41] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

[42] See Sarah E. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans*, Centre for Strategic and International Studies, 2005; Chiyuki Aoi, Cedric de Coning, and Ramesh Thakur, eds., *Unintended Consequences of Peacekeeping Operations*, United Nations University Press, 2007; Keith J. Allred, "Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It," in Cornelius Friesendorf, ed., *Strategies against Human Trafficking: The Role of the Security Sector*, Vienna, 2009; Heather M. Smith and Charles A. Smith, "Human Trafficking: The Unintended Effects of United Nations Intervention", *International Political Science Review*, vol. 32, 2011.

[43] See A/70/729; see also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18548&LangID=E.

protection; the right to assistance and support; access to remedies; and the right to safe return/protection from retrafficking/protection from persecution.

G. Additional observations subsequent to the presentation of the report of the Special Rapporteur to the Human Rights Council

47. The following section highlights additional feedback from Member States and other stakeholders during the interactive dialogue held between the Special Rapporteur and the members of the Human Rights Council and the Security Council, convened in an open debate on the theme "Conflict-related sexual violence: responding to human trafficking in situations of conflict-related sexual violence". During the dialogue the Special Rapporteur made an intervention addressing the link between trafficking and conflict. The paragraphs below do not provide an exhaustive list of the topics discussed, but address some of the most frequently recurring issues pertaining to the thematic at hand.

1. Prevention of trafficking in persons in conflict and post-conflict settings

48. Victims of trafficking are entitled to the same rights, due diligence protection and prevention against trafficking in persons by States whether in times of conflict or otherwise. To achieve this, anti-trafficking responses should be initiated at the very outset of a conflict and should be addressed systematically in all crisis situations.[44] Failure to consider risk factors of human trafficking at the beginning of a conflict situation, or allowing evidence of exploitation to emerge before responding, as reactive response, is not effective. A response triggered by the presence of victims of exploitation or abuse is a response that comes too late as it has failed to address the crime of trafficking when it actually began.

49. In this regard, the prevention of trafficking in the context of large movements of people has recently been addressed, including at the various international and regional workshops and meetings that led to the establishment of the guidelines to protect migrants in countries experiencing conflict or natural disasters held under the auspices of the Migrants in Countries in Crisis Initiative. Prevention of trafficking is also expected to be one of the focus areas at the General Assembly high-level plenary meeting on addressing large movements of refugees and migrants, to be held on 19 September 2016.

50. Other opportunities to prevent trafficking in persons in times of armed conflict and otherwise include the use and adaptation of existing pre-conflict anti-trafficking tools for the prevention of trafficking at the national, regional and international levels. These include national plans of action to address trafficking in persons, the ratification and domestication of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other relevant international human rights and humanitarian law instruments, the implementation of the 2030 Agenda for Sustainable Development (resolution 70/1) and the United Nations Global Plan of Action to Combat Trafficking in Persons (resolution 64/293).

51. The use of the Internet and social media for the deception, recruitment, indoctrination and sale of potential and actual victims of trafficking, especially women and children, by extremist non-State armed groups has been mentioned

[44] See IOM, "Addressing Human Trafficking and Exploitation in Times of Crisis", Geneva, 2015.

above (see paras. 30 and 31). Preventive measures aimed at countering the broadcasting of online messages for this purpose, including through targeted media campaigns using credible actors such as former members, respected community or religious elders, have been shared by States and by numerous other entities working in the field. In this regard, the example of the online videos distributed by the British Metropolitan Police Service of Syrian refugee women warning foreign women about the realities of life under ISIL to counter the fraud and deception that drive online recruitment was highlighted.[45]

52. The benefit of trained law enforcement, peacekeeping and humanitarian personnel has also been mentioned both by States and by other entities active in the field as a means of preventing trafficking in persons, especially women and children. In this regard, several examples of successful joint cooperation between States to train law enforcement officials and to conduct joint anti-trafficking operations were mentioned, including the recent joint exercises between European and African law enforcement officials organized by the Centre of Excellence for Stability Police Units and the Organization for Security and Cooperation in Europe, which were focused on reducing human trafficking along migrant routes.[46]

53. The private sector is another actor that could play a positive role in preventing trafficking in persons for labour exploitation and other labour abuses of persons fleeing conflict. In this regard, private sector initiatives have developed guidance to help companies that operate in areas with presence of refugees to understand and identify indicators of risk with regard to labour exploitation and to assist them in implementing due diligence measures to prevent and mitigate labour abuses within their supply chains. One such initiative is the recently published guidance on "Syrian refugees working in Turkey" issued by the Business Social Compliance Initiative and the Foreign Trade Association.[47]

2. Protection of victims and potential victims of trafficking

54. States are required by international law to take effective measures to ensure that victims of trafficking under their jurisdiction or effective control are protected from further exploitation and harm.

55. However, during conflict even the most basic and urgent victim protection measures may be difficult to secure. For example, effective protection to the victims of forced marriage and sexual enslavement at the hands of ISIS and Boko Haram is proving challenging. Post-conflict societies may also lack the capacity to undertake necessary risk assessments and provide required protections to victims and potential victims of trafficking due to inadequate or non-existent referral mechanisms. Moreover, trafficking in persons is currently not taken into consideration within existing humanitarian and peacekeeping operations in conflict and post-conflict

[45] Melanie Smith, "Who can prevent British women joining Isis? Those who have returned", *The Guardian*, 2016 (www.theguardian.com/world/video/2016/jan/12/syrian-mothers-urge-uk-women-not-to-take-their-families-to-war-zone-video).

[46] The Centre of Excellence for Stability Police Units hosts exercises to address the alarming increase in human trafficking along migrant routes (https://www.army.mil/article/170730/coespu_hosts_exercises_to_address_alarming_increases_in_human_trafficking_along_migrant_routes).

[47] Business Social Compliance Initiative and Foreign Trade Association, "Guidance Document: Syrian Refugees Working in Turkey", 2016 (www.bsci-intl.org/sites/default/files/Guidance-Document-Syrians-in-Turkey%20-final.pdf).

situations. As a result, many victims and potential victims of trafficking, especially those fleeing conflict, remain undetected, primarily due to lack of trained officials likely to encounter and identify possible victims of trafficking in persons, such as law enforcement, peacekeepers and humanitarian personnel. Victims may also refrain from seeking protection due to the social stigmatization linked to certain forms of trafficking, including sexual exploitation, possible retaliation from traffickers, discrimination or mistrust of authorities.

56. Discussions on how to break the trafficking cycle while focusing on the rights and needs of all trafficked persons or potential victims of trafficking echoes the sentiments contained in the statement by the President of the Security Council of 16 December 2015, which urged relevant United Nations agencies operating in armed conflict and post-conflict situations to build their technical capacity to assess conflict situations for instances of trafficking in persons, proactively screen for potential victims of trafficking and facilitate access to needed services for identified victims.[48]

57. Furthermore, States should establish or adapt existing mechanisms and procedures designed to ensure victim protection for the purpose of detecting trafficking cases or the risk of trafficking in all locations where there are large influxes of migrants and refugees, including hotspots, reception centres and administrative detention centres for migrants. While existing referral mechanisms are generally based within or related to police operations, detection and protection of trafficking victims or people exposed to a high risk of trafficking as a result of their attempts to flee conflict should rather be based on procedures established in close cooperation between social authorities and civil society organizations. States have an obligation to detect cases of trafficking and to ensure the full implementation of national legislation providing victims with assistance and support, and such support should not be made conditional on the initiation of criminal proceedings, the legal qualification of the crime or victims' cooperation with law enforcement authorities. Moreover, States should consider extending a number of measures, especially by providing assistance in securing employment, to people at risk of trafficking and exploitation.

58. With regard to gaps in the financial capacity of actors to address human trafficking, the subject of international cooperation between States to, inter alia, finance existing mechanisms such as the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons and the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery has been raised. These funds can be used to provide much needed resources and capacities to humanitarian actors, who often bear the burden of providing protection from within limited means, and sometimes beyond their range of abilities.

3. Impunity

59. The majority of States have enacted anti-trafficking laws. Of those States that have adopted such laws, 41 per cent have reported no trafficking convictions, or fewer than 10, per year,[49] a figure that reveals the extent of impunity for perpetrators involved in the crime of trafficking in persons, whether government employees, members of the military or peacekeeping, humanitarian and other international personnel during conflict and post-conflict situations. Impunity is a

[48] See S/PRST/2015/25.

[49] See UNODC, *Global Report on Trafficking in Persons* (2014).

contributing factor to trafficking in persons. The accountability of those who engage in trafficking in persons in situations of armed conflict mitigates the risks of trafficking. In cases where national criminal justice systems fail or lack the jurisdiction to appropriately respond to trafficking, the possibility of international, hybrid or regional courts prosecuting cases of trafficking, within the scope of their jurisdiction, with the possibility of including crimes of human trafficking within the legal statutes of such courts so as to ensure accountability and fight impunity, is a matter under discussion.

60. Using existing sanctions regimes of the Security Council such as the ISIL and Al-Qaida regimes (see resolution 2253 (2015)), including Boko Haram, to cover human trafficking crimes in conflict by, inter alia, including specific references to trafficking was further raised by some States and entities active in the field as possible tools to address impunity for trafficking in persons.

61. Human trafficking is a serious crime under international law, but in the present circumstances it is also a low risk, high profit organized crime. As such, States noted that monitoring the illicit financial flows it generates for criminal networks and terrorist groups engaged in cross-border transactions could be a means to address impunity, although most transactions appear to rely on non-formal financial systems.

IV. Conclusion

62. Trafficking in persons in conflict and post-conflict situations is not just a possible result, but rather a consequence of crisis and conflict on a regular basis, and it must therefore be seen and addressed as a systemic outcome of conflict. Conflict-related trafficking is rarely detected, however, and even less addressed.

63. Conflict influences the form and nature of trafficking in different ways. The severity of trafficking-related exploitation appears to be high when it occurs during conflict, and may be even greater in post-conflict situations, enhanced by conditions that are themselves a cause or consequence of conflict, such as impunity and an increase in generalized violence. Certain forms of trafficking-related exploitation, such as forced military recruitment of both children and adults, are either specific to conflict or more prevalent in situations of conflict. Sexual exploitation is another form of trafficking that intersects with the dynamics of situations of conflict, including the use of proceeds from the trafficking, trading and ransoming individuals to purchase arms and pay fighters, which perpetuates the cycle of violence against civilians.

64. A range of conditions particular to or commonly associated with situations of conflict fuel trafficking by amplifying vulnerabilities and increasing opportunities for exploitation. These include, but are not limited to, a distorted economy that is heavily reliant on criminality and the presence of organized criminal groups already involved in cross-border trafficking of arms, drugs and other illicit products that have the capacity to expand their activities into trafficking in persons and are therefore in a position to take advantage of additional opportunities to generate profit. A weak or non-existent justice and protection system that perpetuates impunity fails to protect the most vulnerable groups and individuals of society from exploitation. Other factors

include a high prevalence and toleration of violence that extends beyond armed forces to include communities and families, as well as pressure to move, leading to dangerous migration decisions. Failure to consider anti-trafficking responses within humanitarian or peacekeeping efforts at the outset of conflicts further increases the vulnerability of trafficked persons or potential victims of trafficking.

65. These and other factors do not just create the conditions under which trafficking can occur, they also exacerbate the vulnerability of those who may already be susceptible to being trafficked, including migrants, asylum seekers, refugees, women and girls and children travelling alone.

66. In addition, the nature and forms of trafficking in persons associated with conflict are highly gendered. For example, abduction into military forces affects males and females differently. Men and boys are typically forced into soldiering while women and girls are generally forced into support roles, and they typically face much greater risk of sexual assault as either a primary purpose or an additional manifestation of their exploitation. As previously noted, sexual enslavement, a practice exacerbated by situations of conflict, is highly gendered in that it disproportionately affects women and girls. Other forms of trafficking-related exploitation particular to or especially prevalent in conflict, including forced and temporary marriage, are highly gendered in their motivation and impact, which underscores the importance of a gender analysis in all trafficking prevention efforts and responses.

67. Finally, while the present report of the Special Rapporteur is aimed at raising international awareness of the forms and nature of trafficking in persons in conflict and post-conflict situations on the basis of existing reliable information, she highlights the fact that, as new types of conflict arise, and modern means of combat are used, further research on this subject will be needed.

V. Recommendations

68. In view of the legal responsibility of States to identify, protect and assist trafficked persons in all circumstances, including in conflict and post-conflict situations, and to work to ensure that those responsible for violations of human rights are held accountable, the Special Rapporteur offers the following recommendations. Given the timeliness and the importance of the thematic addressed in this report, and taking into account the central role of the General Assembly, other United Nations bodies and institutions, especially on conflict-related issues, the Special Rapporteur also wishes to reiterate the recommendations contained in her report to the thirty-second session of the Human Rights Council (A/HRC/32/41).

A. Recommendations in relation to trafficking of persons in conflict areas or trafficking of persons fleeing conflict

69. All States, particularly those hosting potential victims of trafficking among persons fleeing conflict, should:

(a) Protect people, particularly children, women and minority groups in conflict-affected areas and people fleeing conflict, from all forms of trafficking in persons;

(b) Identify measures to prevent exploitation of the labour of nationals and non-nationals fleeing conflict, including by establishing safe and legal channels of migration, respecting the principle of non-refoulement and ensuring that migrants have regular access to the labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations;

(c) Ensure free-of-charge birth and marriage registration of nationals and non-nationals fleeing conflict, including in internally displaced person and refugee camps, in cooperation with United Nations agencies and programmes and international organizations, in order to prevent or address potential trafficking in children for sexual and other forms of exploitation and the exploitation of the labour of individuals, particularly underage children and women;

(d) Prevent and prosecute all forms of trafficking in persons for all purposes, including for temporary, forced and/or servile marriages;

(e) Grant non-national victims of trafficking residence status and assistance, not to be made conditional on the initiation of criminal proceedings or their cooperation with law enforcement authorities;

(f) Adequately train all stakeholders, including peacekeepers and humanitarian personnel working in conflict zones, in refugee camps and in areas of arrival of large influxes of people fleeing conflict, to identify trafficking or risks of trafficking, in cooperation with United Nations agencies and programmes, international organizations, host countries and civil society organizations;

(g) Establish and/or adapt national procedures for assistance and protection services for victims and potential victims of trafficking in persons, including gender- and child-sensitive measures, to detect trafficking cases and indications of the risk of trafficking in all locations where there are large influxes of refugees and migrants, including hotspots, reception centres and administrative detention centres for migrants;

(h) Involve national and local social authorities and civil society organizations in procedures to detect trafficking cases and indications of the risk of trafficking, as well as in the organization of assistance, protection and support for victims and potential victims in cases where a high number of people are identified; such measures must not be made conditional on the initiation of criminal proceedings, the legal qualification of the crime or the cooperation of victims with law enforcement authorities;

(i) Consider extending a number of protective measures, especially by providing assistance in securing employment, to people at risk of trafficking and exploitation;

(j) Not detain, prosecute or punish victims of trafficking for violations of immigration laws or for unlawful activities they were involved in as a direct consequence of their situation as trafficked persons, including violations and

offences linked with prostitution, petty crime and irregular entry/stay in the host country;

(k) Consider donating funds regularly for the protection and assistance of victims in conflict to the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery and the International Criminal Court Trust Fund for Victims.

70. United Nations agencies and programmes, international organizations and humanitarian actors should:

(a) Address trafficking in persons in conflict situations in a systematic manner, starting from the outset of the conflict, even if incidents of trafficking have not been previously detected, and identify trafficking cases or risks of trafficking at an early stage, including trafficking for the purpose of sexual exploitation and labour exploitation or other forms of exploitation in source, transit or host countries;

(b) Share and apply measures, methodologies and indicators to address trafficking in persons as early as possible and prevent such trafficking from the outset of a conflict/crisis;

(c) Establish or revise existing standard operating procedures and conduct training for personnel, including personnel of contractors and implementing agencies who are likely to enter into contact with victims and potential victims of trafficking; such procedures and training should include instructions concerning protective measures, including appropriate and tailored assistance, to be applied when indications of trafficking, exploitation or risk of trafficking are found, in collaboration with national and local authorities and civil society organizations;

(d) Include prevention of trafficking in persons as part of life-saving protection activities from the outset of a conflict/crisis;

(e) Include rights-based anti-trafficking response/action in existing cluster systems for humanitarian action;

(f) Cooperate with State and non-State actors involved in the short- and long-term response to conflict, including with respect to the social integration of victims of trafficking in persons.

B. Recommendations in relation to the protection of children from trafficking in persons

71. States hosting, among persons fleeing conflict, children who may have been or are at risk of being victims of trafficking in persons should:

(a) Prevent trafficking in persons, especially targeting isolated children such as orphans, children left behind by parents fleeing conflict, children moving alone to flee conflict areas or those in camps, in cooperation with civil society organizations, United Nations agencies and programmes and international organizations;

(b) Adopt proactive measures to protect children caught in conflict that are based on the best interest of the child and in line with international humanitarian, human rights and refugee law, when indications of child trafficking or risk of child trafficking are identified;

(c) Recognize the specific vulnerability of trafficked girls or potential victims of trafficking for sexual and labour exploitation in conflict and post-conflict situations and take measures to reduce their vulnerabilities;

(d) Ban administrative detention of children, in particular, but not only, for violations of immigration laws and regulations;

(e) Ensure that trafficked children and any other trafficked persons are not detained, prosecuted or punished for violations of immigration laws or for unlawful activities they are involved in as a direct consequence of their situation as trafficked persons.

72. In addition, the United Nations should ensure that child trafficking is linked to the six grave violations and abuses against children.[50] Such violations should be taken into consideration as grounds on which to bar countries that are repeatedly listed in the annual reports of the Secretary-General on children and armed conflict as being involved in such violations from contributing troops to United Nations operations.

C. Recommendations for strengthening responses to address trafficking of women and girls for purposes of sexual exploitation in conflict and post-conflict situations

73 All States, whether source, transit or destination countries of women and girls trafficked for sexual exploitation in conflict and post-conflict areas, should:

(a) Recognize and address the vulnerability of women and girls fleeing conflict to the risk of trafficking for sexual exploitation, whether in refugee/internally displaced persons camps or at the hands of the military, extremist groups or family members;

(b) Prevent early marriages, whether in refugee/internally displaced persons camps or in the host country;

(c) Prevent and prosecute all forms of trafficking of women and girls for temporary, forced and/or servile marriages;

(d) Identify, protect and assist victims of trafficking for sexual exploitation and sexual slavery;

(e) Address the root causes of trafficking in persons on the basis of a gender-sensitive approach, in cooperation with civil society organizations, United Nations agencies and programmes and international organizations;

(f) Ensure that issues concerned with sexual and other forms of gender-based violence, including human trafficking, are incorporated into peacebuilding

[50] See Security Council resolution 1612 (2005) and https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/.

and post-conflict reconstruction processes and support women's full and equal participation in decision-making, especially when this relates to trafficking issues in conflict situations, in line with the general guidelines and recommendations of the *Global Study on the Implementation of United Nations Security Council Resolution 1325*.[51]

D. Recommendations in relation to the prevention of trafficking in persons for labour exploitation in conflict and post-conflict areas

74. State contracting agencies of armed forces deployed in conflict and post-conflict areas, including in the context of peacekeeping operations, should:

(a) Exercise due diligence when employing workers, including migrant workers, to provide goods and services and help to ensure that businesses operating in conflict and post-conflict areas are not involved in human rights abuses, including trafficking in persons for labour exploitation;

(b) Whenever possible, hire workers directly, rather than by engaging contractors or subcontractors or using intermediate agencies, to ensure that the supply chain is free of trafficking in persons;

(c) Ensure that business enterprises in conflict areas, whether private or State-owned/supported, are not involved in trafficking in persons, including for the purpose of labour exploitation, and ensure transparent and strict requirements for the entire recruitment process and strict rules for placement and employment agencies;

(d) Require and ensure that private individuals or companies they have contracted or subcontracted protect the rights of workers, including migrant workers and refugees, and provide decent working and living conditions to workers, including safeguarding their right to return and their freedom of assembly and association;

(e) Exercise due diligence to prevent or mitigate trafficking committed by subcontracted private individuals or companies that are directly linked to their operations, even if the State agencies of armed forces have not themselves contributed to the violations;

(f) Establish monitoring and control mechanisms at labour sites with an effective complaint mechanism to enable workers to report instances of trafficking.

E. Recommendations in relation to anti-trafficking action in peacekeeping operations

75. States contributing personnel to peacekeeping operations should:

(a) Waive the immunity of peacekeepers as soon as indications of their involvement in trafficking situations or exploitation have been detected, and prosecute perpetrators without delay;

[51] UN-Women, *Preventing Conflict, Transforming Justice, Securing the Peace*, 2015.

(b) Ensure that mandatory training for peacekeeping personnel includes the prevention of trafficking, the identification of situations involving trafficking or risks of trafficking and assistance to and protection of victims and potential victims, in cooperation with United Nations agencies and programmes and international organizations;

(c) Ensure adequate protection for whistle-blowers and prevent any adverse impact on their careers and working conditions;

(d) Disclose information publicly on disciplinary and administrative procedures taken by contributing countries in relation to alleged perpetrators within their national troops;

(e) Implement the special measures for protection from sexual exploitation and sexual abuse by United Nations peacekeeping personnel proposed by the Secretary-General (see A/70/729) and the recommendations contained in the report of the independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, "Taking action on sexual exploitation and abuse by peacekeepers".[52]

76. The United Nations should:

(a) Continue its efforts to implement and reinforce the United Nations zero-tolerance policy for sexual exploitation and abuse by peacekeepers and ensure the protection of victims, including by negotiating with the host country the possibility of granting subsidiary jurisdiction to hear and adjudicate claims of sexual abuse and exploitation, and provide compensation to victims of trafficking in persons;

(b) Address labour exploitation by making all necessary efforts to ensure that, in conflict and post-conflict areas, including in the context of peacekeeping operations, all workers, including migrant workers, employed by State and non-State military actors, their contractors and subcontractors are employed under decent conditions of work, and establish a zero-tolerance policy towards violations of their fundamental rights.

F. Recommendations in relation to research and awareness-raising

77. Concerned governmental institutions, law enforcement authorities, civil society organizations, academia, United Nations agencies and programmes and international organizations should undertake further research on the different forms of trafficking in persons in relation to conflict and post-conflict situations, including on:

(a) The linkage between trafficking in persons and xenophobia, including the vulnerability of minority groups to trafficking;

(b) The linkage between gender and trafficking in persons in conflicts, not only with regard to girls and women but also boys and men;

[52] http://www.refworld.org/docid/568d16eb4.html.

(c) Recruitment modalities employed by extremist groups, especially with respect to children and their use as combatants, sexual slaves, human shields or suicide bombers;

(d) The link between organized crime and all forms of trafficking in persons, especially women and children, as a result of weak rule-of-law situations during and following conflicts;

(e) Illicit financial flows generated from criminal networks engaged in trafficking in persons;

(f) The role of individual, family and/or community-based criminal intermediation in fuelling human trafficking, especially for the purpose of temporary, forced and/or servile marriages related to conflict;

(g) Trafficking in persons for the purpose of removal of organs in the context of conflict;

(h) Early identification of cases of trafficking in persons, especially women and children, in the context of massive influxes of migrants as a result of conflict.

78. The media should be adequately sensitized about the linkage between trafficking in persons, especially women and children, and conflict, and should be aware of its gender dimension, in order to be able to report correctly about incidents of trafficking affecting girls, boys, women and men living in such circumstances.

79. Member States, United Nations entities, international and non-governmental organizations and civil society organizations should continue to raise awareness about human trafficking among at-risk populations along migration routes with regard to their risk of exploitation and abuse by human traffickers, including in hotspots, reception centres and transit camps, through the use of the Internet and targeted social-media-based campaigns.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, submitted in accordance with Human Rights Council resolutions 6/29 and 24/6.

* A/71/150.

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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

The 2030 Agenda for Sustainable Development and the Sustainable Development Goals provide an opportunity to improve the health and human rights of those furthest behind. Human rights and the right-to-health framework can contribute to their effective implementation and achievement. The present report highlights the mutually reinforcing complementarities between the Goals and the right to health. It considers four issues in focus to illustrate how the right to health can help to address critical implementation gaps within the Sustainable Development Goals framework, namely, equality and non-discrimination; accountability; universal health coverage; and violence.

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I. Introduction

1. The 2030 Agenda for Sustainable Development (General Assembly resolution 70/1) is one of the most important and ambitious global strategies to emerge from the United Nations. The 2030 Agenda includes 17 Sustainable Development Goals, which reflect a holistic approach to transforming the world into a more peaceful, just and inclusive global community. The Goals are focused on social, economic and environmental objectives with attention to good governance, the rule of law, access to justice, personal security and fighting inequality. Sustainable Development Goal 3 focuses on health, with other Goals also including many health-related commitments.

2. Although the process and final outcome are not without important criticism,[1] the negotiation of the 2030 Agenda and the 17 Sustainable Development Goals concluded with a commitment to the promotion and protection of human rights. The 2030 Agenda is grounded in the Universal Declaration of Human Rights and international human rights treaties and is informed by the Declaration on the Right to Development (resolution 70/1, para. 10). Notably, the 2030 Agenda includes a commitment to be "implemented in a manner that is consistent with the rights and obligations of States under international law" (ibid., para. 18). In other words, the realization of international human rights law, which includes the right to health, is in and of itself an explicit objective of the Sustainable Development Goals.

3. At an instrumental level, the Sustainable Development Goals and international human rights law have much to offer each other. With careful attention to human rights, global and national efforts towards the Goals can support the realization of the right to health. Conversely, the right to health and other human rights can play a key role in supporting the Goals. It is that special symbiotic relationship that is the focus of the present report, particularly the contributions that the right to health can make towards the effective implementation of the Goals.

II. 2030 Agenda for Sustainable Development: key issues and principles

4. The 2030 Agenda builds on the United Nations Millennium Declaration, adopted at the start of the new millennium and concluded in 2015. The policy objectives of the Millennium Declaration and the Millennium Development Goals focused on improved human development outcomes in health, education, poverty and gender equality in low-income countries (A/59/422, paras. 8-13). That agenda received unprecedented attention from the international community, funding priorities and international relations throughout its 15 years. The 2030 Agenda inherits that strategic space and will be a powerful policy tool influencing international and domestic development agendas through the second and third decades of the millennium.

[1] Barbara Adams and others, eds., *Spotlight on Sustainable Development 2016: Report of the Reflection Group on the 2030 Agenda for Sustainable Development* (Rheinbreitbach, Germany, Social Watch and others, 2016); Claire E. Brolan, Peter S. Hill and Gorik Ooms, "'Everywhere but not specifically somewhere': a qualitative study on why the right to health is not explicit in the post-2015 negotiations", *BMC International Health and Human Rights*, vol. 15, No. 22 (August 2015).

5. The Millennium Development Goals were narrow in scope, focusing on economic and social issues in low-income nations. Health had particular prominence within the Millennium Development Goals, with three of the eight Goals focused on maternal health, child health and HIV/AIDS, tuberculosis and malaria. The Sustainable Development Goals are broader, covering the economic, social and environmental dimensions of development. They are universal, applying to rich and poor countries, and designed to be integrated, interlinked and cross-cutting. Importantly, the 2030 Agenda makes a broad commitment to "[ensuring] that no one is left behind" and "[reaching] the furthest behind first" with the aim of reducing inequalities within and among countries (Goal 10). This is reflected in a number of Sustainable Development Goals and resonates with the key human rights principles of non-discrimination and equality.

6. Health is central to the Sustainable Development Goals, as it is both an outcome of and a path to achieving poverty reduction and sustainable development. Progress in health is both dependent on and a consequence of progress towards other Goals. Goal 3 is a specific commitment to "ensure healthy lives and promote well-being for all at all ages". Goal 3 is associated with nine targets, which include addressing child and maternal mortality and infectious and non-communicable diseases. The Special Rapporteur welcomes recognition of the emerging burden of non-communicable diseases, which represent the majority of deaths worldwide, with a disproportionate and devastating impact on the poor and marginalized.[2] There are also cross-cutting, systems-oriented targets, including universal access to sexual and reproductive health care and universal health coverage.

7. Almost all of the 17 Goals have a linkage with health, and many are important underlying determinants of health, including:

- Poverty eradication (Goal 1)
- Food security and nutrition (Goal 2)
- Inclusive and equitable quality education (Goal 4)
- Gender equality (Goal 5)
- Sustainable water and sanitation (Goal 6)
- Reducing inequalities within and between countries (Goal 10)
- Making cities and settlements safe (Goal 11)
- Climate change and access to energy (Goal 13)
- Peaceful and inclusive societies, access to justice and inclusive and accountable institutions (Goal 16)
- Global partnerships (Goal 17)

8. The many synergies between the Sustainable Development Goals and the right to health notwithstanding, there are a number of challenges. Many of the health-related targets are reductive in their approach and do not reflect critical right-to-health elements. A superficial interpretation of the health indicators threatens to undermine the fulfilment of right-to-health obligations, for example to ensure that health-care coverage is not merely expanded but that it meets critical right-to-health

[2] World Health Organization (WHO), *Global Status Report on Non-Communicable Diseases 2014* (Geneva, 2014).

requirements, including availability, accessibility, acceptability and quality. Many of the Goals' health-related targets and indicators focus narrowly on biomedical aspects, despite the requirement to ensure that health promotion and primary care are grounded in human rights and modern public health principles. The commitments made in the Declaration of Alma-Ata and the Ottawa Charter for Health Promotion, 1986, should be reaffirmed and revitalized by all stakeholders, and the ninth Global Conference on Health Promotion[3] should serve that purpose.

9. Other important human rights challenges regarding implementation of the 2030 Agenda include the weak accountability requirements, unclear guidance on how to implement the Sustainable Development Goals holistically and a failure to make commitments or offer guidance on how to transform the global financial system to support such a broad and ambitious global strategy. The role of the private sector also poses various human rights challenges.

10. Nonetheless, while the 2030 Agenda may be flawed, it has the potential to improve the lives of many, in particular the most excluded and marginalized. Human rights and the right to health can reinforce many of the Sustainable Development Goals and, where there are implementation gaps, can offer valuable normative guidance towards their meaningful achievement.

III. The right to health and the Sustainable Development Goals

A. The right to health as a framework for achieving the Sustainable Development Goals

11. The present section provides only a very brief introduction to the right-to-health framework and some of the ways in which it can reinforce, strengthen and advance the implementation of the Sustainable Development Goals. It is important to recall a fundamental difference between human rights and the Sustainable Development Goals. While the Sustainable Development Goals are political commitments, the right to health gives rise to legally binding obligations on States to progressively realize the right to health, as well as duties on the part of other actors, and to do so in the context of their policies and programmes on the Goals.

12. Regrettably, the 2030 Agenda does not explicitly state that health is a human right. As mentioned previously, the Sustainable Development Goals are grounded in the Universal Declaration of Human Rights and international human rights treaties. All States have ratified at least one of those treaties. Regional treaties in Africa, Europe and the Americas protect the right to health, as do at least 100 national constitutions worldwide.[4]

13. The right to health is also interconnected with other internationally recognized human rights relevant to the Sustainable Development Goals, including the rights to water, food, adequate housing, education, privacy, freedoms of expression and association, freedom from torture, identity and equality before the law, which must also be respected, protected and fulfilled in the context of the Goals.

[3] See www.who.int/healthpromotion/conferences/9gchp/en.

[4] Hans V. Hogerzeil, Melanie Samson and Jaume Vidal Casanova, "Ruling for access: leading court cases in developing countries on access to essential medicines as part of the fulfilment of the right to health" (Geneva, WHO, 2004).

14. The right to health has been clarified in general comments and observations adopted by the United Nations treaty bodies, including general comment No. 14 of the Committee on Economic, Social and Cultural Rights.[5] An increasingly rich jurisprudence and literature on the right to health has also enhanced understanding of this fundamental right.

15. The paragraphs below elaborate the norms and obligations that are embedded in the right-to-health legal framework and must be factored into and will support progress in meeting the health-related Sustainable Development Goals.

B. Health care and the underlying determinants of the right to health

16. The right to health includes a right to health care. Health care is closely connected to all the targets in Goal 3 and directly reflected in the targets to achieve universal health coverage (target 3.8) and ensure universal access to sexual and reproductive health-care services (target 3.7). The relationship between universal health coverage and the right to health is explored further below, while the right to sexual and reproductive health care has been elaborated in general comments Nos. 14 and 22 of the Committee on Economic, Social and Cultural Rights, as well as in a number of previous reports by the mandate holder (see E/CN.4/2004/49, A/66/254, A/HRC/14/20 and A/HRC/32/32). The right to health can also support and be supported by such targets as the reduction of maternal and newborn and under-5 mortality rates (targets 3.1 and 3.2) and of the incidence of communicable and non-communicable diseases (targets 3.3 and 3.4), the promotion of mental health (target 3.4) and the reduction of the number of deaths from road traffic accidents (target 3.6).

17. The right to health requires that health-care goods, services and facilities be available in adequate numbers; financially and geographically accessible, as well as accessible on the basis of non-discrimination; acceptable, that is, respectful of the culture of individuals, minorities, peoples and communities and sensitive to gender and life-cycle requirements; and of good quality.[6] Several of the Sustainable Development Goal targets are relevant to this framework, including the commitment to increase the training, recruitment and retention of health workers in developing countries (target 3.c), which supports the principle of availability of services.

18. An effective and integrated health system that is based on the human rights principles of equality and non-discrimination, transparency, accountability and participation is at the heart of the right to health. Health systems are all too often not a priority for States or for bilateral and multilateral donors. In addition, they receive scant attention within the 2030 Agenda, yet many of the Sustainable Development Goals and targets are dependent on a strong health system that is adequately funded, transparent and accountable. Without focused investment in health system strengthening, there is little prospect of much progress on the health-related Goals, including addressing the growing burden of non-communicable diseases, universal health coverage and other targets. This implies financial investment, as well as investment in good governance, transparency, participation and accountability mechanisms.

[5] Committee on Economic, Social and Cultural Rights, general comments Nos. 14 and 22; Committee on the Rights of the Child, general comment No. 15.

[6] Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 12.

19. The right to health encompasses the underlying determinants of health, including its social and psychosocial determinants. The Sustainable Development Goals address many of these underlying determinants, from specific right-to-health entitlements found in the targets of Goal 3, such as road safety, harmful alcohol and tobacco use and environmental pollution, as well as other Goals and targets, including on clean water and sanitation (Goal 6), education (Goal 4), food (Goal 2), decent work (Goal 8), reducing inequalities (Goal 10), gender equality (Goal 5), poverty reduction (Goal 1), climate change and access to energy (Goal 13), peace, justice and strong institutions (Goal 16) and violence (targets 5.2, 16.1 and 16.2).

20. For example, in addressing climate change and environmental pollution (Goal 13 and target 3.9), States and other actors must recognize the particular health impact that these environmental issues have on certain populations, due in part to socioeconomic inequality, cultural norms and intrinsic psychological factors.[7] Climate change increases the incidence of diseases that already disproportionately affect the poor, such as malaria and diarrhoea. Likewise, environmental pollution contributes to the growing burden of non-communicable diseases, disproportionately experienced by the poor. This increases health expenditures and ill mental and physical health among those who can least afford it, reinforcing the vicious cycle of poverty (A/HRC/32/23, para. 24).

21. Goal 3 will not be met without a robust commitment to addressing all underlying determinants of health or sustained investment in transparent and accountable health-care systems.

C. Participation and access to information

22. The Sustainable Development Goals were born through a uniquely participatory process. They also include important commitments to participation, including target 16.7, Ensure responsive, inclusive, participatory and representative decision-making at all levels, as well as other Goals and targets that are crucial to free, informed and meaningful participation, such as public access to information and the protection of fundamental freedoms (target 16.10).

23. International human rights law recognizes the right of individuals to take part in the conduct of public affairs.[8] Article 12 of the International Covenant on Economic, Social and Cultural Rights requires that States respect the right of individuals and groups to participate in decision-making processes that affect their health and development. Participation should be free, informed, active and meaningful (see A/69/213).

24. States should ensure that rights holders, including those from marginalized groups, are provided with the conditions to participate in the design, implementation and monitoring of laws, policies and strategies relevant to meeting the Sustainable Development Goals. The effective recognition, enjoyment and protection of public freedoms, including freedom of opinion and expression and freedom of peaceful assembly and association, is crucial in this respect.

[7] 2015 *Lancet* Commission on Health and Climate Change, "Health and climate change: policy responses to protect public health", *The Lancet*, vol. 386, No. 10006 (November 2015).

[8] Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

25. As a key precondition for the full realization of all human rights, including the right to health, civil society actors working on health-related issues should be able to carry out their work in a safe and enabling environment. The Special Rapporteur is concerned about the limited space for civil society in many countries, including those actors working on health-related rights.

D. Obligations under the right to health

26. As previously stated, the Sustainable Development Goals are political commitments. However, under the international human rights framework, in all their efforts to meet the Goals, States should act in conformity with their obligations to respect, protect and fulfil the right to health. The key elements of States' obligations under the right to health include progressive realization, obligations of immediate effect, maximum available resources and international assistance and cooperation.

27. The right to health is subject to progressive realization, which means that States have an obligation to move expeditiously and as effectively as possible, through deliberate, concrete and targeted steps, towards the full realization of the right (see E/CN.4/2003/53 and Corr.1 and 2). This requires adequate indicators and benchmarks to properly monitor progress over time. Examining how Governments create or miss opportunities to generate income, allocate budgets and actually spend allocated funds is useful to evaluate whether they are meeting their obligations to progressively realize their health and other economic, social and cultural rights obligations to the maximum of available resources (E/2009/90, paras. 44-54 and 74). Tracking how countries are investing resources in different Goals and targets is essential to ensuring that efforts to meet them are channelled properly and that the most marginalized populations get the attention that they deserve.

28. Certain health obligations are of immediate effect and are not subject to progressive realization. This includes core obligations, such as non-discrimination. The Sustainable Development Goals reflect a number of core obligations, such as access to health facilities, goods and services on a non-discriminatory basis, access to food, shelter, housing and sanitation, safe and potable water and essential medicines,[9] and ensuring universal coverage of health-care services.[10] Other core obligations that will be essential to realizing the Goals include the revision of the national and subnational legal and policy environment and the amendment or enactment of laws and policies when necessary; the adoption of a national health strategy that addresses the right to health; and the equitable distribution of health facilities, goods and services.

29. States must also devote maximum available resources to the right to health.[11] In many countries, the health system is underfunded. The commitment in target 3.c to substantially increase health financing is welcome and resonates with this obligation. However, resources accumulated to finance health systems must be expended in the context of good governance, transparency, participation and accountability. Civil

[9] Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43.
[10] Committee on the Rights of the Child, general comment No. 15, para. 73.
[11] International Covenant on Economic Social and Cultural Rights, art. 2 (1).

society must be meaningfully involved as a partner in all levels of decision-making and accountability.[12]

30. Maximum available resources include domestic and international resources. Increasing the budget for health may require reallocation of existing resources or generating additional resources. The Sustainable Development Goals require States to enhance capacity for tax and other revenue collection, including through international cooperation. According to the human rights principles of non-discrimination and equality, States should ensure the financing of health on the basis of progressive tax systems with redistributive capacity that benefits poorer householders. Other areas that are critical to ensuring maximum available resources include debt and deficit financing, monetary policy and financial regulation (A/HRC/26/28, para. 25).

31. All States have obligations under international law to take steps jointly and separately through international assistance and cooperation towards the realization of economic, social and cultural rights, including the right to health.[13] Beyond financial and technical assistance, the human rights concept of international assistance and cooperation includes developed States' responsibility to work "actively towards an international order that is conducive to the elimination of poverty and the realization of the right to health" (A/59/422, para. 32).

32. The concept of international assistance and cooperation runs throughout the Sustainable Development Goals and resonates strongly with the principles of global equity, partnership and cooperation that animate the 2030 Agenda, as well as the Addis Ababa Action Agenda of the Third International Conference on Financing for Development. In addition, the human rights concept of international assistance and cooperation provides legal reinforcement to Goal 17 on strengthening the means of implementation to revitalize the Global Partnership for Sustainable Development, including countries' development commitments to fully implement their official development assistance targets (target 17.2), mobilize additional financial resources for developing countries (target 17.3) and assist them in addressing debt (target 17.4).

33. Developed/high-income countries have a duty to provide cooperation and assistance to developing countries to support efforts to realize the right to health in their respective roles as donors and in their roles as members of international and regional development and financial organizations.[14] To comply with those obligations, States have to respect the enjoyment of the right to health in other countries and use their political or legal influence to prevent third parties from violating that right in other countries.

34. Developing countries members of international financial organizations should work to ensure protection of the right to health in those institutions' lending policies, credit agreements and other international measures.[15] They also have an

[12] Society for International Development, Transparency International — Kenya and Kenya Ethical and Legal Issues Network, "Sealing corruption loopholes in Kenya's health procurement systems", Policy Brief, No. 2 (April 2016).

[13] Charter of the United Nations, Articles 55 and 56; Committee on Economic, Social and Cultural Rights, general comments Nos. 2, 3 and 14.

[14] Charter of the United Nations, Articles 55 and 56; Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 14.

[15] Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 39.

obligation to use resources at the national level and to seek resources through international cooperation and assistance to realize the right to health.

35. The private sector has a significant bearing in the Sustainable Development Goals as it plays a crucial role — at times positive and at times negative — as a provider of health-care goods and services, as well as in research and development for medicines in many countries. In line with international human rights standards, States have an obligation to protect against interference and harm by the private sector. The adoption and implementation of a robust legal, regulatory and policy framework is critical, and accountability arrangements relating to the private sector, including monitoring, review and remedies, must be in place at the global, regional and national levels.

36. Accountability, equality and non-discrimination are essential components of the right-to-health framework and will be introduced in the following section.

IV. Issues in focus

37. The relationship between the Sustainable Development Goals and the right to health gives rise to many issues of great importance. As space in the present report is limited, the present section provides an introductory exploration of four features of the 2030 Agenda that resonate with the right to health: addressing inequity and equality; accountability; universal health coverage; and violence.

38. The commitments to leaving no one behind and ensuring accountability are fundamental principles of human rights. Universal health coverage is crucial to ensuring equity in implementing the right to health, while violence is a vital and underattended underlying determinant of health and a systemic barrier to gaining access to health care, improving well-being and meeting the Sustainable Development Goals.

39. Each of the aforementioned issues represents a new focus compared with the millennium agenda that requires operational engagement in both rich and poor countries. The challenges reflected by those four issues in focus exist as much among certain segments of the population in developed countries as they do in developing countries. The 2030 Agenda targets and indicators do not adequately address those issues, creating uncertainties about how States are to carry out the business of effective implementation. Human rights and the right to health can offer a legally grounded and instructive framework to address the gaps.[16]

A. Leaving no one behind: equity, equality and non-discrimination

40. Inequality, discrimination and inequity are defining aspects of the global community that shape and influence health policies and outcomes[17] and reflect a

[16] Adams and others, *Spotlight on Sustainable Development* (see footnote 1); International Labour Organization (ILO), *Women at Work Report: Trends 2016* (Geneva, 2016); Office of the United Nations High Commissioner for Human Rights (OHCHR) and Center for Economic and Social Rights, "Who will be accountable? Human rights and the post-2015 development agenda" (New York and Geneva, 2013).

[17] WHO, *State of Inequality: Reproductive, Newborn and Child Health* (Geneva, 2015); A/HRC/29/31, paras. 29-42.

deeply flawed approach to investment in and prioritization of human development. The Millennium Development Goals failed to recognize the importance of equity, non-discrimination and equality in health, which masked inequalities and disparities within and between countries, leaving the poorest and the most marginalized even further behind.[18]

41. The 2030 Agenda commits to prioritizing the poorest and most vulnerable and to reaching the furthest behind first. Ensuring healthy lives for all at all ages (Goal 3) positions equality, non-discrimination and equity as the central health issue in the 2030 Agenda, complemented by Goal 10, which calls for reducing inequalities within and among countries. However, achieving this requires a foundational shift in implementation, one that prioritizes those furthest behind, identifies and gives visibility to those populations, understands the barriers to their exclusion and establishes mechanisms and policies to enable their inclusion and empowerment (E/HLPF/2016/2, para. 109).

42. Regrettably, many of the targets and indicators developed to guide States towards achieving health equality, non-discrimination and equity by 2030 are vague (target 3.4), still commit to tracking progress in the aggregate (indicator 3.8.2) and fail to articulate the interconnected nature of many of the Sustainable Development Goals. This permits Governments to focus on easier targets or narrow implementation plans that can undermine the broader commitment to prioritize those furthest behind first. The right-to-health framework serves as a helpful tool to understand inequities, set priorities and shape a holistic set of implementation mechanisms to address that gap across the 2030 Agenda.

43. The right to health requires States to address holistically a range of barriers arising from inequality and discrimination that impede access to health care and underlying determinants of health and to prioritize vulnerable and poor members of society.[19] This is consistent with the commitment to collectively implement Sustainable Development Goal targets and, importantly, provides normative guidance for prioritization.

Prioritizing resources for health

44. The financial resources required to both develop and gain access to health systems constitute a common barrier to achieving health equity, affecting the health and well-being of the world's poorest and marginalized most acutely. Developing countries, in particular those without strong health systems, face significant challenges to achieving the health-related Sustainable Development Goals. The right to health requires States to prioritize provision for the most poor and marginalized, even in the face of resource barriers, through a range of measures. A few illustrative examples linking various Goals are as follows:

(a) For those living in poverty or without sufficient means, States should ensure health coverage or access to care to prevent discrimination (targets 1.3 and 3.8);[20]

[18] Save the Children, "Leaving no one behind: embedding equity in the post-2015 framework through stepping stone targets" (London, 2015).

[19] Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 18-19.

[20] Committee on Economic, Social and Cultural Rights, general comment No. 14.

(b) Resource allocation should prioritize equitable distribution and access to health facilities, goods and services and not disproportionately favour health services for privileged populations, such as civil servants or those in large urban areas (target 1.a and Goal 3);

(c) Resource allocation should ensure that the most vulnerable and marginalized have access to an adequate supply of safe and potable water (Goals 3 and 6).

Transforming legal and policy environments

45. Discriminatory laws, policies and practices outside the health space can have a direct impact on the realization of the right to health.[21] For example, poor people are often excluded from access to health services, as well as from underlying determinants of health, such as social housing and other social services, not (only) because they are poor but (also) because they lack security of land tenure or an official legal identity. Criminalized populations may be barred as a matter of law or policy from social housing or other social services. Persons with disabilities may be denied legal capacity and subject to medical interventions or institutionalization without their consent.

46. Equally, such environments exacerbate barriers to health services and result in a range of adverse consequences for poor and marginalized populations. For example, laws criminalizing drug use may drive people who use drugs from life-saving harm reduction services (target 3.3/3.5).[22] Restrictive and punitive drug policies can deprive people suffering from pain of their right to palliative care. Laws criminalizing abortion or restricting the provision of sexual and reproductive information or services put women and girls at increased risk of pregnancy-related complications and maternal mortality (target 3.2/3.7/Goal 5) (see A/HRC/32/32).

47. Repressive laws can also restrict space for civil society actors to operate, thus hindering efforts towards the realization of basic rights and freedoms. Laws prohibiting non-governmental organizations and human rights defenders from working without official registration and limiting or altogether banning access to foreign funding have chilled the efforts to promote the rights of marginalized populations across the globe.

48. In order to overcome inequalities and discrimination relating to health, the right to health requires that States take immediate and comprehensive legal measures, including through the repeal of discriminatory laws, and adopt robust legal protections of equality and non-discrimination (Goal 5 and target 10.3).[23] States should also adopt adequately resourced national health policies that give particular attention to all marginalized groups, and regularly review progress. National health equity strategies that encompass such an approach can help to

[21] Manjima Bhattacharjya and others, "The right(s) evidence: sex work, violence and HIV in Asia — a multi-country qualitative study" (United Nations Population Fund, United Nations Development Programme (UNDP) and Asia Pacific Network of Sex Workers, 2015).

[22] Judith Levine and others, "Risks, rights and health" (New York, UNDP, 2012); Steffanie A. Strathdee and others, "HIV and risk environment for injecting drug users: the past, present and future", *The Lancet*, vol. 376, No. 9737 (July 2010).

[23] Committee on Economic, Social and Cultural Rights, general comment No. 14.

support a holistic and comprehensive approach to tacking inequalities and discrimination.[24]

49. Legal empowerment projects that work with marginalized communities help to secure access to health care. They also respond to and seek to remedy human rights violations, including violations of the right to health. Strengthening legal literacy and legal aid services can also be instrumental in relation to the underlying determinants of health, such as obtaining housing and social welfare benefits (Goal 1 and target 11.1); preventing unlawful or excessive detention and addressing police violence or abuse (Goals 11 and 16); protecting or establishing land rights (Goals 1, 5 and 11); establishing identity and citizenship (target 16.9); preventing gender-based discrimination (Goals 5 and 16); and promoting the meaningful involvement of poor and other marginalized people in decisions affecting their access to health care and underlying determinants of health (targets 5.5 and 16.7).

Participation and empowerment

50. Poor and marginalized populations are often excluded from meaningful participation in decisions about policies that directly affect their health and development. This exacerbates exclusion, discrimination and inequality, and in turn, poor health. Without the participation of communities, particularly the poor and vulnerable, health priorities and systems will continue to favour urban, able-bodied and privileged populations. Regrettably, Goal 3 fails to incorporate participation as an indicator for measuring health progress.

51. Participation of a diverse cross section of civil society, especially user groups, affected communities and grass-roots activists, is essential to ensuring implementation of a global agenda that is inclusive and meaningful for all. The right to health requires that participation be active and meaningful and thus move beyond tokenistic modes of representation. This requires resource mobilization and establishing various mechanisms for civil society to engage with national, regional and international Sustainable Development Goal processes, including the high-level political forum on sustainable development (Goal 17).

52. Community empowerment initiatives working with poor and marginalized communities have achieved extraordinary health outcomes, for example in the global fight to end HIV/AIDS (target 3.3) (E/HLPF/2016/2, para. 107). Economic and social empowerment, such as the decriminalization of sex work and sex worker mobilization, have improved health and identified critical health gaps (Goals 3 and 5).[25] Community mobilization to attain adequate and stable housing for homeless people living with HIV can have life-saving implications for their health (targets 3.3 and 11.1).[26] Efforts to empower parents in vulnerable situations through participatory parental education initiatives reduce the risk of negative health outcomes for their children (Goal 3 and targets 4.2, 5.2 and 16.2).[27] When young

[24] Eric A. Friedman, "National health equity strategies to implement the global promise of SDGs", *Health and Human Rights Journal*, SDG Series blog, 5 October 2016. Available from www.hhrjournal.org/2015/10/sdg-series-national-health-equity-strategies-to-implement-the-global-promise-of-sdgs.

[25] Joint United Nations Programme on HIV/AIDS, "How AIDS changed everything: MDG 6-15 years, 15 lessons of hope from the AIDS response" (Geneva, 2015).

[26] Kate Shannon and others, "Global epidemiology of HIV among female sex workers: influence of structural determinants", *The Lancet*, Vol. 385, No. 9962 (January 2015).

[27] Amy Knowlton and others, "Individual, interpersonal and structural correlates of effective HAART use among urban active injection drug users", *Journal of Acquired Immune Deficiency Syndromes*, vol. 41, No. 4 (April 2006).

girls have access to education, child mortality rates and girls' long-term health improve (Goals 3, 4 and 5) (A/70/213, para. 9). Investments in such initiatives place the human rights principles of autonomy and participation at the centre of public health policy and are critical components of an open, inclusive and peaceful society.

Disaggregated data

53. In conformity with international human rights standards, the Sustainable Development Goals include a commitment to collect high-quality, accessible, timely and reliable data. Realizing the right to health and achieving health equity require identifying and understanding inequalities both within and between countries. Identifying patterns of vulnerability can be accomplished through disaggregated data collection. This is essential to identifying disparities, where targeted efforts are required, monitoring progress and supporting review and accountability. The Inter-Agency and Expert Group on Sustainable Development Goal Indicators has recommended that global Sustainable Development Goal-related data be disaggregated on grounds of "income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts" (target 17.18). Such disaggregation would be a welcome advance over the Millennium Development Goals, which relied on data presented as national averages.

54. Prioritizing the most vulnerable requires acknowledging that many populations are invisible through traditional data collection methods either because they are excluded from civil registration or because they face other barriers, such as being homeless or criminalized, and never come into contact with official statistical processes. Qualitative data collection methods are a practical and powerful complement to traditional quantitative methods.[28]

55. The 2030 Agenda commitment to strengthening statistics collection in developing countries should include support for disaggregation and high-quality data, in particular regarding civil registration and vital statistics. The Special Rapporteur encourages States to disaggregate data on further grounds and to use both qualitative and quantitative methods. This will be essential to identifying obstacles facing different groups to ensure that suitable legal and policy measures can reduce discrimination and support substantive equality.

B. Accountability

56. Accountability is at the heart of human rights, including the right to health. Accountability for human rights consists of a process that provides rights holders with an opportunity to understand how duty bearers have discharged their obligations, and for duty bearers to explain how they have done so. It has a corrective function, allowing individual or collective grievances to be redressed; it also has a preventive function that helps to determine which laws, policies and programmes are delivering and where adjustments need to be made.[29] This should be viewed as a constructive process that supports individuals and groups in realizing their rights and duty bearers in fulfilling their obligations.

[28] Flavia Bustreo and others, *Women's and Children's Health: Evidence of Impact of Human Rights* (Geneva, WHO, 2013), p. 85, sect. 4.2.

[29] OHCHR and Center for Economic and Social Rights, "Who will be accountable?" (see footnote 16).

57. The 2030 Agenda includes a welcome commitment to "accountability" through "a robust, voluntary, effective, participatory, transparent and integrated follow-up and review framework" (resolution 70/1, para. 72) that respects human rights at the international, regional and national levels. Accountability will be critical to the attainment of the Sustainable Development Goals. Yet what accountability, follow-up and review precisely mean in the context of the Sustainable Development Goals remains unclear.

58. The fields of global health and human rights have, in recent years, developed accountability analysis and institutions, which can inspire accountability for the health-related Sustainable Development Goals and help to shape new arrangements.[30] In 2011, the Commission on Information and Accountability for Women's and Children's Health, established to propose a framework to ensure that commitments made under the Global Strategy for Women's and Children's Health (2010-2015) were met, proposed a tripartite model of accountability, composed of monitoring, review and remedial action.[31] That model, derived from the human rights understanding of accountability, was subsequently taken up by the Secretary-General, including in the Global Strategy for Women's, Children's and Adolescents' Health 2016-2030, which supports the achievement of the Sustainable Development Goals related to women's, children's and adolescents' health.

Monitoring

59. Monitoring means "providing critical and valid information on what is happening, where and to whom (results) and how much is spent, where, on what and on whom (resources)".[31] It is envisaged that follow-up and review will be based on a set of global indicators and data to be complemented by regional and national indicators. The 2030 Agenda makes commitments to "high-quality, accessible, timely, reliable and disaggregated" data.

60. States should ensure that adopted indicators are relevant to human rights in the context of the Sustainable Development Goals and capture the availability, accessibility, acceptability and quality of health care and underlying determinants of health. Participatory governance mechanisms should be in place for disaggregated data collection and analysis, and there must be effective communication of data to decision makers and the population more generally. States should also use innovative methodologies to deal with the challenges of sample sizes.

61. Statistical data are important but not enough for monitoring; they should also be supplemented by qualitative data and information, and analysis by human rights monitoring mechanisms, international organizations and civil society. Monitoring should focus not only on outcomes but also on processes of development and on duty bearers, including States, donors, the private sector, international organizations and civil society organizations. Monitoring, including data, must feed into review processes.

[30] Alicia Ely Yamin and Rebecca Cantor, "Between insurrectional discourse and operational guidance: challenges and dilemmas in implementing human rights-based approaches to health", *Journal of Human Rights Practice*, vol. 6, No. 3 (2014).

[31] Commission on Information and Accountability for Women's and Children's Health, "Keeping promises, measuring results" (WHO, 2011), p. 7.

Review

62. Review means "analysing data to determine whether ... health has improved, and whether pledges, promises and commitments have been kept" by all relevant actors.[31] It will be crucial for review processes to move beyond data analysis to assess whether Sustainable Development Goal commitments, including right-to-health commitments, have been met.

63. Arrangements for monitoring and review at the global, regional and national levels are still being developed. Multi-stakeholder, participatory, transparent and regular reviews will be essential. A wide variety of review mechanisms should play a role, including in political, administrative, judicial and quasi-judicial processes. There is a critical role for independent mechanisms at the national, regional and international levels.[32]

64. Review at the national and subnational levels should take place within existing national structures and processes, including national human rights institutions, policy review processes, comprehensive maternal death audits, patient's rights tribunals, and litigation.[33] For example, national human rights institutions provide accountability for the right-to-health-related Sustainable Development Goals, including by undertaking national assessments and enquiries and by participating in other domestic and international review processes, offering advice to Governments on promoting and protecting rights in national implementation plans and on rights-based implementation, including through support for the development and use of human rights impact assessments.[34]

65. Many of the challenges to and opportunities for achieving the Sustainable Development Goals require international cooperation, for which global or regional accountability mechanisms can be better placed to review progress than national mechanisms. Regional and global review mechanisms should scrutinize whether States have met not only their domestic right-to-health obligations in the context of the Goals but also their obligations of international cooperation, including through development cooperation and trade agreements. Regional and global mechanisms must also find a way to hold the private sector, international organizations and civil society to account.

66. The high-level political forum on sustainable development is the central global review body identified by the 2030 Agenda and is mandated to carry out regular reviews, as well as cross-cutting and thematic reviews. The Special Rapporteur is concerned that the high-level political forum meets only for eight days each year

[32] Paul Hunt, "SDGs and the importance of formal independent review: an opportunity for health to lead the way", *Health and Human Rights Journal*, SDG Series blog, 2 September 2015. Available from www.hhrjournal.org/2015/09/sdg-series-sdgs-and-the-importance-of-formal-independent-review-an-opportunity-for-health-to-lead-the-way.

[33] Rebecca Brown, "Leaving no one behind: human rights and accountability are fundamental to addressing disparities in sexual and reproductive health", *Health and Human Rights Journal*, SDG Series blog, 7 September 2015. Available from www.hhrjournal.org/2015/09/sdg-series-leaving-no-one-behind-human-rights-and-accountability-are-fundamental-to-addressing-disparities-in-sexual-and-reproductive-health.

[34] Steven L. B. Jensen, Allison Corkery and Kate Donald, "Realizing rights through the Sustainable Development Goals: the role of national human rights institutions", Briefing Paper, June 2015. Available from www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/research/nhri_briefingpaper_may2015.pdf.

and is underresourced. In addition, reporting to the high-level political forum is voluntary.

67. Another key mechanism is the Independent Accountability Panel, appointed earlier in 2016, which will monitor progress towards the Global Strategy for Women's, Children's and Adolescents' Health. The Special Rapporteur welcomes the appointment of the Panel and will follow its work with interest.

68. International human rights mechanisms, including the universal periodic review and independent mechanisms such as the treaty bodies and the special procedures of the Human Rights Council, should consider the role that the Sustainable Development Goals can play in supporting the realization of the right to health and address obstacles to the enjoyment of the right to health that arise in the context of the Goals. The reviews undertaken by those bodies should be considered by the high-level political forum and the Independent Accountability Panel, and vice versa.

69. At the national level, and increasingly at the regional and global levels, judicial and quasi-judicial reviews are playing a role in supporting accountability for the right to health, including on issues at the heart of the Sustainable Development Goals, such as HIV/AIDS and maternal mortality. Litigation can play a special and potentially transformative role where the right to health has been violated.

Remedies and redress

70. Remedies and redress are an essential dimension of human rights accountability but are completely neglected in the 2030 Agenda. Remedies can be understood as "measures to put things right, as far as possible, if they have not gone as promised or planned".[35] Where States are failing to meet their human rights obligations in the context of the Sustainable Development Goals, duty bearers are under an obligation to act.

71. Satisfaction and guarantees of non-repetition are critical to ensuring non-repetition and include, at the national and subnational levels, legislation, judicial remedies and redress, monitoring and enforcement mechanisms, improvements in policy formulation, budgets and planning, and right-to-health training of relevant duty bearers. Review processes should make recommendations for such remedies, and duty bearers should act on them. At the same time, remedies should be available to individuals whose right to health has been violated. Some remedies, such as restitution, rehabilitation and compensation, focus on redressing harm to individual or group rights holders. Judicial remedies are extremely important for redressing violations, and States and other actors should implement relevant recommendations.

[35] The Partnership for Maternal, Newborn and Child Health, "A review of global accountability mechanisms", in *Maternal Mortality, Human Rights and Accountability*, Paul Hunt and Tony Gray, eds. (Abingdon, United Kingdom, Routledge, 2013).

Role of civil society actors

72. Accountability depends not only on robust monitoring and review mechanisms but also on the meaningful engagement and participation of civil society. Human rights and health-related civil society actors should support accountability for the Sustainable Development Goals through monitoring, reporting, advocacy, engagement with national, regional and international review processes, and litigation. States and the international community should create the space for civil society to participate in relevant review processes, and ensure that those processes are transparent and accessible. The involvement of civil society actors is crucial; without them, the 2030 Agenda will be but an empty promise.

73. Providing opportunities for disadvantaged and marginalized groups to fully participate in accountability arrangements will be essential to guaranteeing their human rights in the context of the Sustainable Development Goals.

C. Universal health coverage

74. Universal health coverage is a key dimension of the 2030 Agenda commitment towards achieving healthy lives and well-being for all at all ages. Goal 3 includes an explicit commitment to "achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all" (target 3.8) and to "ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes" (target 3.7).

75. The intersection of universal health coverage and human rights is a large, complex topic that, from the perspective of the right to health, should include a number of elements, such as the role of the private sector and of international financial institutions. The Special Rapporteur plans to devote space to universal health coverage in his future work and, in the present report, will merely point to a number of features required to establish rights-based universal health coverage.

76. Universal health coverage has been called "a practical expression" of the right to health.[36] It is indeed a core obligation under children's right to health.[37] However, not all paths to universal health coverage are consistent with human rights requirements. Targets 3.7 and 3.8 do not make explicit commitments to confer priority to the poor and marginalized either in the process of expanding coverage or in developing priorities as to which services to provide. Without those clear commitments, there is a risk that universal health coverage efforts will entrench inequality. For example, in countries lacking strong health systems, Governments may pursue strategies that prioritize expansion to groups in privileged positions, such as those working in the formal sector, where infrastructure and opportunistic private or national insurance schemes are readily available. Likewise, countries with centralized and expansive health coverage might soon proclaim achievement of

[36] WHO, "Positioning health in the post-2015 development agenda", WHO Discussion Paper, October 2012.

[37] Committee on the Rights of the Child, general comment No. 15, para. 73.

universal health coverage, even while some of their most vulnerable subgroups are left with health care that is abusive, coercive and/or of poor quality.[38]

77. The prioritization and participation of the world's most vulnerable is vital to both defining and achieving equitable universal health coverage. This is also consistent with core obligations under the right to health to guarantee access to health services without discrimination and to take deliberate, targeted and concrete steps to ensure the effective realization of that guarantee, especially for the most marginalized.[39] Likewise, States have a core obligation to ensure effective and meaningful participation in the development of national health plans, including strategies for universal health coverage, that at the very minimum ensures that the views of the poor and most marginalized are incorporated. If the furthest behind are not prioritized and progressive strategies for expanding coverage for the most marginalized are not immediately established with their active participation, there is a real risk that the target could go unmet by 2030.

Towards a rights-based universal health coverage

78. The Special Rapporteur wishes to emphasize that universal health coverage must be understood as consistent with the right to health. While some components of targets 3.7 and 3.8, namely universal coverage, financial risk protection, access to quality essential health-care services, access to safe, effective, quality and affordable essential medicines and vaccines, and universal access to sexual and reproductive health-care services, can be read as consistent with the right to health,[40] they obscure vital right-to-health standards.

79. Universal health coverage cannot be achieved without meeting the core requirements of availability, accessibility, acceptability and quality under the right to health. Among other things, services must be safely and geographically accessible without discrimination. The right to health requires that essential services include those for populations with specialized needs, such as sexual and reproductive health services adapted to the needs of women, girls, including those with disabilities, and transgender persons. Health services and access to underlying determinants must also be economically accessible. Even where there is widespread access to health services, the right to health demands that they be of sufficient quality, including in good working condition and medically and scientifically appropriate.

80. The right to health also requires that progress towards universal health coverage be monitored to assess who is covered, what services are covered, and the extent of financial protection, with data disaggregated to measure progress across sectors and groups. Focusing on coverage averages (indicator 3.8.1) without disaggregating data can mask exclusion, especially of those most marginalized. Using insurance coverage as a proxy indicator for financial protection (indicator 3.8.2) fails to address the impoverishing impact of health expenditures.[41]

[38] Oxfam International, *Universal Health Coverage: Why Health Insurance Schemes Are Leaving the Poor Behind*, Briefing Paper, No. 176 (Oxford, 2013).

[39] Committee on Economic, Social and Cultural Rights, general comment No. 20.

[40] Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 43-44, and general comment No. 22, para. 49 (c), (e) and (f).

[41] Audrey R. Chapman, "The problems with the proposed indicators for monitoring universal health coverage in the Sustainable Development Goals", *Health and Human Rights Journal*, blog, 17 March 2016.

81. Moving towards universal health coverage requires long-term progressive realization of the right to health that engages work across many sectors at the local, national, and international levels. The World Health Organization Consultative Group on Equity and Universal Health Coverage has proposed a three-part strategy for countries to progressively realize universal health coverage consistent with equity principles and the right to health. This includes prioritizing the worst off, expanding coverage to everyone and reducing out-of-pocket payments, all while ensuring that disadvantaged groups are not left behind.[42]

82. The right to health recognizes the importance of prioritizing investments in primary and preventive care, which benefits a far larger sector of the population, over expensive specialized health services, often accessible only to a small, privileged fraction of the population. Investing in primary health services prevents illness and promotes mental and physical health, and in turn reduces the need for specialized care.

Financial risk protection

83. In many countries, out-of-pocket payments, such as user fees and co-payments, fees for treatment and indirect fees related to the costs of seeking health care, such as transportation costs, create major barriers to health care.

84. Such costs often have a significant and disproportionate impact on the poor, who pay a considerably larger portion of their total income on health. In turn, they drive many households into poverty or deepen the poverty of those already poor. Such fees could bar those without the means to pay from receiving needed care, as well as discourage people from seeking care in the first place.

85. Private, out-of-pocket payments account for about 50 per cent of total health expenditures in countries where more than 50 per cent of the population is living on less than $2 per day. It is actually the poorest and most in need who suffer from such payments.[43] Universal health coverage consistent with the right to health requires establishing a financing system that is equitable and pays special attention to the poor and others unable to pay for health-care services, such as children and adolescents.

Moving past the biomedical model of health

86. States will not achieve Goal 3 without a robust commitment to addressing social and psychosocial determinants of health, as well as inequalities in income, education, living and working conditions and distribution of resources. Universal health coverage must not be limited to biomedical interventions such as medicines and vaccines but must equally include modern interventions that go beyond the biomedical model, including psychosocial and other interventions that address structural and environmental barriers to health. These interventions should be supported and funded as effective and essential interventions, on par with biomedical interventions, and should not be seen as a luxury available only to rich countries.

[42] WHO, *Making Fair Choices on the Path to Universal Health Coverage: Final Report of the WHO Consultative Group on Equity and Universal Health Coverage* (Geneva, 2014).

[43] ILO, *Addressing the global health crisis: universal health protection policies*, Social Protection Policy Papers, No. 13 (Geneva, 2014).

87. The 2030 Agenda affirms that universal health coverage and access to quality health care are necessary to promote mental health and well-being with a specific target to achieve them. This is a welcome advance but fails to address the grossly unmet need for rights-based mental health services.[44] Lack of political will to address mental health as an emerging priority has led to an unacceptable situation with two equally detrimental scenarios: mental health services either are not available for many of those who need them or, when they are in place, too often violate the rights of people receiving care. Unfortunately, in many parts of the world, the entire field of mental health remains hostage to outdated discriminatory attitudes reflected in the lack of political will to invest in community-based social medicine and social psychiatry with a modern public health approach grounded in human rights (A/HRC/29/33, paras. 74-84).

88. Mental health care has been addressed primarily as the management of medical conditions with psychotropic medications and institutionalization, too often without the person's consent. Advancing to the Sustainable Development Goals and universal health coverage is a good opportunity to move to mental health care that is free from outdated policies and practices. Psychosocial and public health interventions that empower people, increase their resilience and address structural factors (such as violence) that contribute to mental ill health are the standard of care, on par with the provision of appropriate and high-quality medications. They must be viewed as part of primary, community-based health care and an integral part of universal health coverage.

Health system strengthening

89. Achieving universal health coverage requires sufficient capacity of well-trained health workers to meet patients' needs. The global health workforce is too small and unequally distributed within and among countries, with poorer countries and communities having the fewest workers. Poor working conditions and low pay contribute to a "skills drain" of health professionals undermining the right to health in communities and countries left behind. This disproportionately affects those with limited finances or access to health care (A/60/348, sect. IV).

90. Strengthening health systems, including by investing in training, recruitment and retention of the health workforce (target 3.c), protecting their rights and improving their wages and working conditions, is essential to progress towards universal health coverage (see A/60/348).

D. Violence as a public health issue in the Sustainable Development Goals

91. Addressing violence cuts across the Sustainable Development Goals and is critical to the realization of the right to health. The Goals envisage "a world free from fear and violence" and include specific commitments to eliminate all forms of violence against all women and girls in the public and private spheres (target 5.2); to eliminate all harmful practices, including child early and forced marriage and genital mutilation (target 5.3); to significantly reduce all forms of violence and related death rates everywhere (target 16.1); and to end all forms of violence against

[44] WHO, *Mental Health Action Plan 2013-2020* (Geneva, 2013).

and torture of children (target 16.2). The Goals also include a commitment to build capacities to prevent violence (target 16.a). In addition, several other Goals address risk factors linked to violence, including ending poverty (Goal 1), ensuring healthy lives and promoting well-being (Goal 3), ensuring quality education (Goal 4), addressing inequalities (Goal 10) and making cities and settlements safe (Goal 11). As recognized in the Goals, reducing and eliminating violence is critical to transforming the world into a peaceful and inclusive global community.

92. Violence is a complex, multi-layered public health phenomenon that affects mortality, mental health, sexual and reproductive health and infectious and non-communicable disease outcomes across the globe.[45] The reduction or elimination of violence within the home, medical and educational settings and broader society is a prerequisite for the realization of the right to health. Violence is one of the most compelling barriers to and determinants of the right to health.

93. There are many forms of violence. Child abuse and neglect, domestic violence between intimate partners and suicide are interpersonal forms of violence. Armed conflicts, State-perpetrated violence, terrorism and organized violent crime are forms of collective violence. Although often viewed and studied as separate phenomena, interpersonal and collective forms of violence share common risk and protective factors and should be addressed as interrelated phenomena.[45] Some of those common risk factors include social, economic and gender inequalities (Goals 1-17), poverty (Goal 1), power asymmetries both in the family and in the community (Goals 1, 5 and 16) and lack of mutual trust and respect. Both forms of violence intensify the risk environment for human rights violations and abuse, especially towards those groups perceived as vulnerable (Goals 3, 5 and 10).

94. To date, the approach to violence reduction has been fragmented, compartmentalizing different forms of violence. Importantly, many forms of violence continue to be tolerated within societies and even supported by States. For example, violence against women and children remains accepted in many societies as a cultural norm. The institutional care of young children, a clear act of violence against children, remains widespread in many countries. Around the world, many groups in vulnerable situations, including women, persons with disabilities, migrants and refugees, and lesbian, gay, bisexual, transgender and intersex persons, experience numerous forms of violence. Each example is also a violation of various human rights protected under international law, including the right to health.

95. A holistic approach to addressing violence is consistent with the aim of collectively implementing the Sustainable Development Goal targets on violence across the agenda. It is also consonant with the indivisible and interrelated nature of human rights. From a human rights and public health perspective, violence must be addressed comprehensively, including obligations to eliminate violence within health-care settings, to address how structural factors, such as laws and policies, institutionalize violence and to eliminate violence against women and children.[46] The right to health also includes an entitlement to safe access to health care and to a

[45] WHO, United Nations Office on Drugs and Crime (UNODC) and UNDP, *Global Status Report on Violence Prevention 2014* (Geneva, WHO, 2014).

[46] Convention on the Rights of the Child, art. 19 (1); Committee on the Rights of the Child, general comment No. 13, para. 7 (a)-(c); Committee on the Elimination of Discrimination against Women, general recommendation No. 19, paras. 1 and 7; Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 10 and 12 (b); and A/HRC/22/53, para. 84.

safe environment. Importantly, children and adolescents have a right to be free from violence and to healthy development.[47]

96. As the global community is concerned by the increasing prevalence of collective violence, including violent extremism, it is important to note how the relationship between collective violence and interpersonal forms of violence may reinforce and feed one another. For example, violence against children in families can lead to high prevalence of youth violence and may contribute to the phenomenon of violent extremism.[45] Prohibiting boys from expressing emotions from an early age, enforcing a toxic and primitive understanding of masculinity, has been linked to acts of extreme violence by young men and reinforced a tendency to join groups and movements that are involved in collective violence.

97. Rights-compliant violence prevention strategies require a modern public health approach, leaving behind the ineffective and brutal legacy of retributive and punitive means to curb violence. These approaches point to an investment in healthy, non-violent and respectful interpersonal relations. This can include various psychosocial interventions, such as training of parents to raise children in non-violent ways, anti-bullying programmes in schools, and empowerment of persons in vulnerable situations.[48] Through these interventions, the resilience and protective factors in individuals, families and communities are harnessed and promoted.

98. Addressing violence proactively as a public health issue can end the vicious cycle of violence, poverty and helplessness. For this, it is vital that investment in healthy human relationships, emotional and social well-being and social capital be prioritized.

V. Conclusions and recommendations

99. The 2030 Agenda for Sustainable Development and the Sustainable Development Goals reflect an unprecedented political commitment that offers opportunities for the realization of the right to health and other human rights. However, to turn this political commitment into reality, pledges must be firmly grounded in international human rights law and the legally binding obligations to promote and protect human rights, including the right to health.

100. The 2030 Agenda makes a strong call to "ensure that no one is left behind" and "reach the furthest behind first". This reflects the need to seriously address inequities, inequality and discrimination as major threats to global development, which is of crucial importance for the effective realization of the right to health.

101. The Sustainable Development Goals and the right-to-health framework have much to offer each other. Importantly, where the health-related Goals show weakness and lack of clarity with regard to implementation, the right to health will be a powerful tool to ensure effective and equitable achievement of the Goals. Embedding equity, non-discrimination and equality, participation

[47] Convention on the Rights of the Child, arts. 6, 19 (1) and 24; and Committee on the Rights of the Child, general comment No. 13, para. 7 (a)-(c).

[48] UNODC, "Compilation of evidence-based family skills training programmes". Available from www.unodc.org/documents/prevention/family-compilation.pdf.

and accountability in the implementation of the 2030 Agenda firmly harnesses the normative value of human rights, placing them at the heart of the Goals.

102. The 2030 Agenda provides momentum to pave the way, both in developing and developed countries, for sustainable investments in modern public health policies and break the vicious cycle of poverty, inequities, social exclusion, discrimination and violence. States and other actors implementing the Sustainable Development Goals must not be tempted to target the "low-hanging fruit" at the expense of the most marginalized and vulnerable.

103. As a matter of priority, the Special Rapporteur recommends that:

(a) Member States ensure full compliance with universal human rights law and principles and refrain from selective approaches to upholding the right to health and related human rights when developing strategies towards the implementation of the Sustainable Development Goals;

(b) Member States ensure attainment of the Sustainable Development Goals through the review of existing national and local legal and policy frameworks to assess their compatibility with the right to health and ensure that national laws, policies and programmes include targeted actions to support enabling legal and policy environments, with attention to the rule of law, health governance, law enforcement and access to justice;

(c) Member States act in conformity with their obligations to respect, protect and fulfil the right to health in all their efforts to achieve the Sustainable Development Goals, and not only Goal 3;

Leaving no one behind

(d) Member States explicitly prohibit discrimination on any grounds that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health and, in this connection, review existing laws, policies and practices, with the aim of removing those that are discriminatory in nature and practice and obstruct implementation of the key principles of the Sustainable Development Goals;

(e) Member States identify disparities and prioritize the most vulnerable through collection and disaggregation of health-related data, using both qualitative and quantitative methods, to monitor progress and support review and accountability in the implementation of the Sustainable Development Goals;

(f) Member States ensure, through concrete legal and policy measures, that rights holders, in particular those in the most vulnerable situations, are empowered to participate in the design, implementation and monitoring of laws, policies and practices relevant to implementing the Sustainable Development Goals and realizing the right to health;

(g) Member States remove all measures that restrict the space for civil society, and ensure safe and enabling environments for civil society actors so as to guarantee a meaningful and respectful partnership with the State;

Universal health coverage

(h) Member States use the right-to-health framework to develop national plans to strengthen health systems and set priorities by addressing inequalities, which is the main goal of universal health coverage;

(i) Member States invest in effective, transparent and accountable health-care systems, with a focus on primary health care and health promotion, and address imbalances and power asymmetries within and beyond health-care systems in all decisions aimed at reaching universal health coverage;

(j) Member States fulfil immediate or core obligations under the right to health to guarantee access to health services without discrimination, and take deliberate, targeted and concrete steps to ensure the effective realization of this right, especially for the most marginalized;

(k) Member States ensure that the focus on addressing financial exclusion does not neglect the equally important issue of discrimination on other grounds, such as race, colour, sex, religion, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and gender identity, age and civil, political, social or other status;

(l) Member States consider expanding the focus of investment in physical health and reduction of mortality, traditionally based on the classical determinants of health such as poverty, education, housing and water and sanitation, to address other determinants, including the quality of physical and psychosocial environments;

(m) Member States ensure that the focus on access to essential medicines and other life-saving interventions does not neglect equally important non-biomedical interventions, including psychosocial interventions, that promote mental and physical health and well-being, reduce violence and contribute to the realization of the right to health and the Sustainable Development Goals;

(n) Member States ensure that the focus on providing accessible and free health care for all and closing the treatment gap does not undermine the need to protect and monitor human rights in patient care, so that health-care services are free from discrimination and violence;

Violence

(o) Member States ensure political commitment at all levels to reach common understanding and agreement that all forms of violence, and not only the most severe ones, are not accepted and should not be tolerated, without any exceptions;

(p) Member States ensure that health-related and other policies addressing violence do so by tackling all forms of violence, and avoid exceptions or selective approaches that condone or tolerate certain forms of violence;

(q) Member States guarantee substantial investments in healthy human relationships, emotional and social well-being and social capital, starting from

interventions that address infant-parent interactions in early childhood and moving through the entire life cycle;

(r) Member States prioritize human and financial resources to address all forms of violence as public health issues, especially in childhood and family policies and services, and ensure that these interventions are considered a priority in health-related policies and integrated as part of universal health coverage;

(s) Member States comply with obligations under the right-to-health framework to address violence, using modern public health interventions, especially regarding children and adolescents, and to that end, adopt legal and policy measures to eliminate all forms of violence against children;

Accountability

(t) Member States ensure that the high-level political forum on sustainable development meets as often as needed, is well resourced financially and with relevant expertise, and that States report on a regular basis after conducting monitoring and participatory reviews at the national level; the high-level political forum should consider reviews undertaken by international human rights mechanisms, such as the universal periodic review, treaty bodies and special procedures of the Human Rights Council;

(u) United Nations human rights procedures, such as the universal periodic review, treaty bodies and special procedures, hold States to account for the right to health in the context of their Sustainable Development Goal-related efforts;

(v) At the national level, Member States ensure the operation of a wide range of accountability processes, including judicial, quasi-judicial, political and administrative mechanisms, and ensure that they are transparent, accessible, participatory and effective;

(w) Member States ensure the collection of high-quality and timely data for the Sustainable Development Goals that are disaggregated in line with the "stratifiers" identified in the 2030 Agenda, and on further grounds as appropriate in the health context of different countries, in order to make visible the reality and needs of marginalized populations;

(x) Member States ensure that data are collected and analysed in a transparent manner and made available and accessible to all relevant stakeholders;

(y) National human rights institutions engage in supporting accountability for the Sustainable Development Goals, for example by undertaking national assessments or enquiries and by providing advice to policymakers.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, submitted pursuant to Human Rights Council resolutions 25/16 and 31/11.

* A/71/150.

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Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

The present report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, includes two parts.

First, the Independent Expert provides an overview of the activities undertaken from August 2015 to July 2016. During that period, the Independent Expert submitted two thematic reports to the Human Rights Council at its thirty-first session in March 2016: a report covering the interrelationship between inequality and financial crises and their implications for the enjoyment of human rights; and his final study on illicit financial flows and human rights and the 2030 Agenda for Sustainable Development. He also presented reports on his visits to China and Greece and undertook an official visit to the European institutions in Brussels focusing on the impact of economic reform and austerity policies implemented in eurozone countries.

Second, the Independent Expert offers some reflections on a number of developments and issues of concern. He provides an overview on debt-related policy developments at the United Nations, including the outcomes of the third International Conference on Financing for Development and of the fourteenth United Nations Conference on Trade and Development, and the Basic Principles on Sovereign Debt Restructuring Processes. He also argues that past international debt relief initiatives have not been able to contribute in a sustainable way to improved human rights outcomes in heavily indebted poor countries, as debt relief, while important, would never have covered the necessary financial means. In addition, he underlines that a new global wave of austerity and debt vulnerabilities in many developing countries that challenges progress on human rights is again increasing, requiring more policy efforts to prevent and solve such crises. Finally, he argues that the current review of frameworks for debt sustainability analysis should be based on a more comprehensive understanding of debt sustainability, incorporating human rights and the social and environmental dimensions of sustainability. He concludes that a more robust and human rights-based framework for sovereign debt is needed in order to achieve the Sustainable Development Goals; that a new global wave of austerity policies and debt vulnerabilities affecting mainly developing countries challenges progress on human rights; and that, in addition to strengthening national resource mobilization, a holistic framework for debt relief remains essential to ensure that international efforts and support in attaining the Goals are not undermined by unsustainable debt.

His recommendations include, among others, establishing a reporting mechanism on debt restructurings; ensuring that monitoring mechanisms track progress on the Sustainable Development Goals, including government spending on the Goals and sectors relevant for the progressive realization of rights; and incorporating human rights obligations into frameworks for carrying out debt sustainability analysis.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 25/16 and 31/11, in which the Council requested the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, to report regularly to the Council and the General Assembly. The report provides an overview of the activities that the Independent Expert undertook between August 2015 and July 2016, followed by reflections on a number of recent developments that must be further highlighted and brought to the attention of the international community.

II. Activities by the Independent Expert

A. Thematic reports

2. Pursuant to Human Rights Council resolutions 25/9 and 25/16, the Independent Expert submitted two thematic reports to the thirty-first session of the Council.

3. First, he submitted a report on the interrelationship between inequality and financial crises and their implication for the enjoyment of human rights (A/HRC/31/60 and Add.1 and 2). In that report, the Independent Expert highlighted compelling evidence that economic inequality was both a result of, and a contributor to, economic crises. He argued that the extreme inequalities of today had significantly contributed to the emergence of financial crises. In the report, he also analysed how financial and sovereign debt crises had entrenched economic inequalities and how austerity measures adopted in response to them had pushed many individuals below minimum income levels.

4. The Independent Expert also highlighted how economic inequality was addressed in international human rights law. He argued that, while human rights law did not necessarily imply a perfectly equal distribution of income and wealth, it did require conditions in which rights could be fully exercised. As such, a certain level of redistribution was expected in order to guarantee individuals an equal enjoyment of the realization of their basic rights without resulting in discriminatory outcomes. The Independent Expert concluded his report with recommendations on addressing inequalities in order to prevent and respond to financial crises, including financial market regulation, minimum wages, progressive taxation and social protection floors. Moreover, structural adjustment programmes should be subjected to robust human rights impact assessments and not only oriented towards short-term fiscal targets to regain debt sustainability.

5. The Independent Expert's second thematic report focused on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development (A/HRC/31/61) pursuant to Human Rights Council resolution 28/5, adopted on 26 March 2015. The final study complemented the interim study of the Independent Expert (A/HRC/28/60 and Corr.1) by focusing in more detail on tax-related illicit financial flows, in particular on tax evasion and avoidance by transnational corporations.

6. The report outlined how illicit financial flows undermined the enjoyment of economic, social, cultural, civil and political rights and emphasized the need for: (a) due diligence and due process in the fight against illicit financial flows; (b) better protection of witnesses and whistle-blowers; and (c) incorporating human rights considerations into the return of stolen assets. It concluded with recommendations to specific stakeholders on how to operationalize the goal of curbing illicit financial flows within the post-2015 development agenda of the United Nations.

B. Country visits

7. During the reporting period, the Independent Expert sent new visit requests to Brazil, Ghana, Grenada and Panama. He reiterated his interest in visiting Jamaica, Tunisia, the United States of America and Zambia.

8. The Independent Expert presented his report to the Human Rights Council (A/HRC/31/60/Add.1) concerning his official visit to China to assess how its international lending contributes to the realization of human rights, in particular economic, social and cultural rights, in borrowing countries. The Independent Expert welcomed the leadership role taken by China in establishing two new multilateral development banks, namely the Asian Infrastructure Investment Bank in Beijing and the New Development Bank in Shanghai.

9. In his report, the Independent Expert noted that China had become a key player in providing funds for South-South cooperation and long-term financing for sustainable development to its partner countries. Development projects supported by Chinese financial institutions had brought benefits, but some projects had caused adverse environmental, social and human rights impacts on affected individuals and communities.

10. The Independent Expert underlined the need to strengthen the implementation of existing social and environmental credit guidelines in operational practices, improve consultation with affected individuals and communities and enhance the responsiveness of financial institutions to their concerns. That included ensuring that affected persons enjoyed effective remedies for potential human rights abuses. In addition, there was a need for more transparency.

11. Furthermore, in relation to foreign business ventures, he stressed the need for financial institutions funding such ventures to establish accessible operational-level grievance mechanisms and independent complaint mechanisms. He also called on the Government of China to adopt appropriate legislative and administrative measures to ensure the accountability and legal liability of Chinese companies and their foreign subsidiaries for potential human rights abuses.

12. The Independent Expert conducted an official visit to Greece in December 2015 to follow up on an earlier visit by his predecessor in April 2013 (see A/HRC/31/60/Add.2). After several years of adjustment policies, more than one million people in Greece still lived in extreme poverty, and unemployment, especially youth unemployment, had remained at unacceptably high levels. The Independent Expert expressed his regret that the human rights obligations of Greece and its international lenders towards rights-holders within the country continued to be sidelined, both in the design of adjustment policies and in the implementation of structural reforms.

13. The Independent Expert argued that Greece was in dire need of debt relief in order to trigger socially inclusive growth. Debt relief should be turned into an investment package to boost the real economy through public investment in infrastructure, research and education. He further argued that Greece needed a modern social welfare system that was just, efficient, sufficiently funded, targeted to those in need and protective of core social, economic and cultural rights in a comprehensive and non-discriminatory manner.

14. He recommended that the Government of Greece and its international lenders review their economic reform policies to ensure that they did not undermine human rights. For that purpose, a comprehensive human rights impact assessment should be undertaken. In his recommendations, the Independent Expert highlighted several measures to protect the unemployed, address gaps in the social protection system and restore universal access to public health care for people who had no social insurance coverage. He called upon European countries to increase their support for combating poverty and social exclusion within Greece and to provide human, technical and financial resources for food, health care and emergency housing of refugees.

15. The Independent Expert would like to thank the Governments of China and Greece for the frank and open dialogue and for their cooperation during his visits.

C. Visit to institutions of the European Union

16. From 30 May to 3 June 2016, the Independent Expert visited institutions of the European Union in Brussels to discuss human rights concerns related to economic adjustment policies and austerity measures implemented in European Union member States. Such reform policies are frequently implemented when financial support is provided to European Union member States, based on binding lending conditionalities by European Union institutions. The Independent Expert wishes to express his appreciation for the open dialogue and full cooperation of European Union institutions during his visit.

17. In his end-of mission statement,[1] the Independent Expert voiced his concern that recent austerity policies had undermined economic, social and labour rights within Europe. He expressed his worry that, in the aftermath of the financial crisis, poverty had risen, with about 121 million people in the European Union at risk of poverty or social exclusion, and expressed his regret that the European Union would be unlikely to reach by 2020 its own official target to reduce by 20 million the number of people at risk of poverty and social exclusion.

18. The Independent Expert highlighted that, while European Union member States were primarily responsible for adherence to their international human rights obligations, international institutions, including the European Union and its bodies and financial institutions, were not beyond the reach of international human rights law. He underscored that European Union institutions and bodies must, at an absolute minimum, respect the international human rights treaties to which all their member States had become a party when making policy recommendations or setting binding conditionalities for providing loans.

[1] Available from ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20057&LangID=E.

19. The Independent Expert welcomed the fact that the European Union had developed several tools to assess social and human rights impacts and was currently further developing guidelines for human rights impact assessments of international trade agreements. He expressed his regret, however, that internal macroeconomic policies did not explicitly use human rights standards as benchmarks against which economic reforms were assessed.

20. In his end-of-mission statement, the Independent Expert also underscored that past economic reform programmes should be evaluated according to whether they had ensured a fair and equal distribution of social adjustment burdens, and not only whether they had reduced budget deficits and restored debt sustainability or economic growth. Such evaluations should assess the extent to which reform programmes had protected economic and social rights and identify gaps to be addressed. Such assessments should inform recommendations, programme design and the financial or technical support provided by the European Union to its member States. A comprehensive report on his visit will be submitted to the thirty-fourth session of the Human Rights Council, to be held in March 2017.

D. Public statements

21. The Independent Expert exchanged views with Member States in bilateral meetings and through the communications procedures on issues brought to his attention. In addition, he issued several public statements on situations, which, in his view, required public attention.[2]

22. On 10 September 2015, the Independent Expert issued a statement in the wake of the adoption by the General Assembly of resolution 69/319, entitled "Basic Principles on Sovereign Debt Restructuring Processes", in which he welcomed the resolution as a positive step towards clarifying existing rules and principles of international law that applied to sovereign debt issues.

23. On 26 October 2015, 11 Special Rapporteurs and Independent Experts of the Human Rights Council submitted observations on the draft environmental and social framework of the future Asian Infrastructure Investment Bank. In their joint letter[3] the independent experts welcomed the steps taken by the Bank to establish mandatory environmental and social standards, but recommended that human rights should be more rigorously integrated within the proposed safeguard policies. The experts stressed that the Bank should aspire to become a bank of the twenty-first century governed by environmental, social and human rights policies reflecting current international standards. The initiative was coordinated by the Independent Expert, who had met the President-designate of the Asian Infrastructure Investment Bank, Jin Liqun, during his visit to China.

24. On 10 November 2015, in a joint statement with four Special Rapporteurs and Independent Experts of the Human Rights Council, the Independent Expert expressed support for a draft law in Argentina aiming to establish a truth commission on economic complicity to assess the role and responsibility of business people for violations that occurred in the country during the 1976-1983 dictatorship.

[2] All public statements of the Independent Expert, if not indicated otherwise, can be accessed from ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?SID=External_Debt.

[3] Available from ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB.pdf.

25. On 8 March 2016, in a joint statement with another Independent Expert, the Independent Expert expressed concern at the implications of a proposed agreement between Argentina and hedge funds that had not participated in previous debt restructurings and had litigated against Argentina. The experts suggested that a human rights impact assessment should be undertaken to review the fiscal impacts of paying the vulture funds.[4]

26. On 8 April 2016, the Independent Expert issued a statement on the Panama Papers, in which he called upon the international community to urgently put an end to financial secrecy, and that the Panama Papers underscored the need for laws requiring public disclosure of beneficial ownership information in all countries. He warned that tax evasion and the flow of funds of illicit origin undermined justice and deprived governments of resources needed for the realization of economic, social and cultural rights.

27. On 15 June 2016, the Independent Expert expressed hope that core provisions of a Belgian law limiting vulture fund litigation would be preserved. The law, which was passed by the Belgian Parliament in 2015 to prevent vulture funds from significantly profiting from financial crises, has been challenged by a hedge fund before the Constitutional Court of Belgium.

28. On 12 July 2016, the Independent Expert and nine special procedures mandate holders stressed that the effective implementation of the 2030 Agenda for Sustainable Development depended upon its consistency with the overarching commitment to human rights. That included accountability, non-discrimination and equality (notably gender equality) and clear consideration of the primacy of States' human rights obligations.

III. Recent developments and issues of concern

A. International debt relief, the attainment of the Millennium Development Goals and lessons learned for the Sustainable Development Goals

29. As the target date for the Millennium Development Goals has passed, it is appropriate to reflect on what has been achieved in relation to target 8.D, "Deal comprehensively with the debt problems of developing countries", of Millennium Development Goal 8, and in relation to the improvement of human rights outcomes through international debt resolution and debt relief for developing countries.

30. In that context, a particular group of developing countries, heavily indebted poor countries, have been at the core of international debt relief efforts.[5] As of 2016, debt relief under the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative is almost complete, and only 3 of 39 eligible countries — Eritrea, Somalia and the Sudan — have not yet received debt relief.

[4] Available from ohchr.org/Documents/Issues/IEDebt/IEArgentina8Mar2016_en.pdf.

[5] For an earlier assessment of progress on Millennium Development Goal 8, see also A/HRC/23/37, which is a report of the previous Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina.

31. A key aim of those initiatives was to reduce the debt stock in heavily indebted poor countries and free up public resources for poverty reduction expenditures. According to the International Monetary Fund (IMF), that has largely been achieved. In 2001, heavily indebted poor countries spent, on average, 6.5 per cent of their gross domestic product (GDP) on poverty reduction as defined in the Poverty Reduction Strategy Papers. By 2015, that figure had risen to 9.1 per cent of GDP. Debt service as a percentage of GDP was reduced from 3.1 per cent in 2001 to 1.5 per cent in 2015.[6]

32. The Independent Expert welcomes the progress achieved. However, he underlines that, for several reasons, international debt relief initiatives have not yet delivered a comprehensive and sustainable solution to debt problems in developing countries. In the following paragraphs, the Independent Expert discusses four challenges.

33. First, according to IMF projections as of March 2016, the debt service of heavily indebted poor countries is expected to again increase significantly over the coming years, both in nominal terms and in percentage of GDP, while poverty reduction expenditure is predicted to see hardly any increases, casting doubt as to whether most of those countries will have sufficient resources at their disposal to make progress towards attaining the Sustainable Development Goals.[6] According to IMF debt sustainability assessments as of April 2016, 8 of the 36 heavily indebted poor countries that received international debt relief are again at high risk of debt distress.[7] That underlines the limitations of one-time debt relief. As debt crises are reoccurring, the need for an improved mechanism that would ensure a fair, timely and more reliable process of debt restructuring or debt relief has remained.

34. Second, the Independent Expert observes that insufficient attention has been given to debt issues in several middle-income countries, including a number of small island developing States that did not qualify for international debt relief owing to their more advanced economic development.

35. Third, the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative did not provide timely relief to heavily indebted countries. More could have been achieved with a mechanism that would have been able to deliver quicker results. In addition, countries had to meet several conditions to qualify for debt relief. Not all of those conditions were useful and some of them increased vulnerability to new crises (see, for example, A/HRC/23/37, paras. 42-44).

36. Finally, international debt relief was not able to free up sufficient resources to allow heavily indebted poor countries to make greater progress in attaining the Millennium Development Goals. The challenges those countries face are too large to ensure that debt relief alone could engender significant and sustainable advancements in the field of economic or social and cultural rights.

37. In 2006, the Millennium Project estimated that all low-income countries would need to annually invest $253 billion and invest $529 billion in 2015 to attain the Millennium Development Goals by 2015. The study estimated that low income countries would require, in 2006, $73 billion in external support to be able to attain

[6] See IMF, "Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) — statistical update", annex III, p. 19. Available from imf.org/external/np/pp/eng/2016/031516.pdf.

[7] See imf.org/external/pubs/ft/dsa/dsalist.pdf.

the Goals.[8] However, debt relief was estimated to reach only about $6 billion for those countries in 2006, in other words less than 10 per cent of the estimations.[9] While cancelling all external debt of low-income countries would have significantly reduced the financial shortfall, debt relief alone would have not been sufficient to ensure the attainment of the Goals in low-income countries. It is therefore not surprising that despite debt relief, progress of heavily indebted poor countries in attaining the Goals has been modest.

38. According to IMF, the target "End poverty and hunger" was only met by 5 of 36 heavily-indebted poor countries that had received debt relief. About half of those, 18 countries, are considered to be "seriously off target"; that indicates that the respective international development goal will not even be met by 2030, unless a significant change occurs.[10]

39. With regard to heavily indebted countries that have received debt relief, there has been more progress in increasing the ratio of girls to boys in primary and secondary school enrolment: 12 heavily indebted poor countries reported that they had attained that target; however, none of the countries for which sufficient data was available appears to have met the Millennium Development Goal target to increase the primary school completion rate. Thirteen countries receiving debt relief met their goal to decrease child mortality, but nearly half of those countries are considered to be "seriously off target" in decreasing the infant mortality rate. More disappointingly, 27 countries are said to be "seriously off target" in decreasing the maternal mortality rate. While 15 have achieved increased access to an improved source of water, only 1 country (Honduras) is reported to have met the target to increase access to improved sanitation facilities. Most heavily indebted poor countries receiving debt relief (29 of 36 countries) are considered to be "seriously off target" in reaching that target.[10]

40. It is obvious that, despite international debt relief, heavily indebted poor countries continue to face many obstacles in attaining international development goals. Numerous reasons may explain the limited progress. Availability or non-availability of public funds may be only one explanation, as many structural factors intervene. As noted above, in the Independent Experts' views, unmet financing needs nevertheless played an important role: many heavily indebted poor countries simply lacked stable, reliable public revenues and external support of sufficient size that would have allowed greater progress.

41. The 2030 Agenda for Sustainable Development necessitates the mobilization of even larger financial resources. A study by Development Finance International and Oxfam suggests that the attainment of the Sustainable Development Goals would require at least $1.5 trillion extra in government spending a year.[11] That will be a challenge, as it has been estimated that government spending on the

[8] UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (New York, Earthscan, 2005), p. 249. Available from http://unmillennium project.org/reports/fullreport.htm.

[9] Ibid., p. 251.

[10] See IMF, "Heavily Indebted Poor Countries (HIPC) Initiative", table A12, pp. 15-16.

[11] Development Finance International and Oxfam, "Financing the Sustainable Development Goals: lessons from government spending on the MDGs", May 2015. Available from governmentspendingwatch.org/images/pdfs/GSW_2015_Report/Financing-Sustainable-Development-Goals-Report-2015.pdf.

Millennium Development Goals had already fallen short of needs by one third from 2012 to 2014. The study, covering 66 developing countries, including several middle-income countries, argued that increased debt service had already significantly reduced available resources for public investment in sectors that were crucial to attaining the international development goals, such as agriculture; education; environment; health; social protection; water, sanitation and hygiene; and women's rights.

42. While overall government spending has increased significantly in developing countries, revenues have not followed suit. That has resulted in growing public deficits, stronger reliance on debt financing and a significant increase in debt service. According to data collected by Development Finance International and Oxfam, in 2013 debt service had already "crowded out" Millennium Development Goal spending in 21 of the 66 countries studied, and Goal-related government spending had not risen to the same degree as overall government expenditure: debt service absorbed 40 per cent of the increased government expenditure and only 25 per cent of additional resources were allocated to Millennium Development Goal sectors.[12] Twenty-one of the 66 assessed countries allocated more than 15 per cent of their budget to debt service, and 12 countries allocated more than 20 per cent. Six countries diverted more than one third of their public spending to debt service, with the highest debt service burdens occurring in Jamaica, Jordan and Sri Lanka.[13]

43. Looking forward to the implementation of the Sustainable Development Goals, those lessons will be essential, in particular the need to ensure systematic, comprehensive and reliable monitoring on how debt service costs might reduce the fiscal space available to governments and the allocation of public resources in sectors crucial for attaining the Goals. That would also require enhancing the transparency of public budgets to ensure that Goal-related expenditures can be better identified.

44. The Independent Expert wishes to highlight that the Sustainable Development Goals are more ambitious compared with the Millennium Development Goals, and require more funding and a stronger monitoring mechanism. While credit financing has an important role to play in attaining the Sustainable Development Goals, more care must be taken to ensure that debt obligations do not undermine progress in attaining those Goals. Furthermore, the Sustainable Development Goals cover only a fraction of the legally binding human rights obligations of States. Care must be taken that pouring resources into Goal implementation does not sidetrack ensuring adequate funds for the protection and fulfilment of all human rights.

B. Developments at the United Nations

45. States have made new commitments to address debt problems in the context of the third International Conference on Financing for Development, held in Addis Ababa from 13 to 16 July 2015, and through the adoption of the 2030 Agenda for Sustainable Development. The General Assembly adopted new Guiding Principles on Sovereign Debt Restructuring Processes in September 2015.

[12] Ibid., p. 3.
[13] Ibid., p. 14.

Addis Ababa Action Agenda

46. The third International Conference on Financing for Development resulted in the adoption of the Addis Ababa Action Agenda, setting out a joint commitment by States to finance the Sustainable Development Goals (see General Assembly resolution 69/313, annex). While the first paragraph of the Agenda includes a commitment to human rights and the right to development, the Independent Expert expressed his regret that human rights were not more vigorously incorporated into several of the substantive sections of the Agenda. That includes, for example, the section on debt and debt sustainability, which does not contain any explicit reference to human rights or to the guiding principles on foreign debt and human rights, which were endorsed in 2012 by the Human Rights Council.

47. In paragraph 93 of the Addis Ababa Action Agenda, States underlined that borrowing was an important tool for financing investment critical to achieving sustainable development, including the sustainable development goals. Acknowledging the substantial debt reduction in several low-income countries through international debt relief, the outcome document highlighted that many countries remained vulnerable to debt crises or were in the midst of crises, including a number of least developed countries, small island developing States and some developed States.

48. The Independent Expert observes that, as international debt relief efforts for heavily indebted poor countries have nearly come to an end, there is currently no internationally agreed framework for dealing with the unsustainable debt of developing countries, including middle-income countries, that would be available to provide solutions. While the Addis Ababa Action Agenda acknowledged that many States — not only low-income countries — required urgent solutions, States could only agree on a rather non-specific commitment, in paragraph 94, that they would "support the maintenance of debt sustainability in those countries that have received debt relief" and explore on a case-by-case basis initiatives to support non-heavily indebted poor countries with sound economic policies that face debt sustainability challenges.

49. In paragraph 97 of the Addis Ababa Action Agenda, States reiterated that debtors and creditors must work together to prevent and resolve unsustainable debt situations and took note of the principles on responsible sovereign lending and borrowing of the United Nations Conference on Trade and Development (UNCTAD). The formulation "we will work towards a global consensus on guidelines for debtor and creditor responsibilities in borrowing by and lending to sovereigns, building on existing initiatives" reflects, however, the limited consensus that has so far emerged in that field.

50. The same can be said in relation to debt restructuring processes. In the Addis Ababa Action Agenda, States affirmed the importance of timely, orderly, effective and fair debt restructurings negotiated in good faith, and expressed concern with non-cooperative creditors disrupting the timely completion of such restructurings. As a solution to that problem, the final text of the Agenda refers mainly to new standards for collective action clauses in government bond contracts proposed by the International Capital Market Association. While those new clauses will make it more difficult for non-cooperative creditors to block debt restructurings in the future, they do not provide a comprehensive and satisfactory solution to the

problem, including the problem of the existing stock of sovereign bonds that do not have those collective action clauses.

51. Overall, States acknowledged in the Addis Ababa Action Agenda various ongoing initiatives for solving or preventing debt crises, but largely failed to endorse more innovative and effective policy proposals or mechanisms. We are therefore entering a much more ambitious Sustainable Development Goal implementation process without a comprehensive framework that would facilitate debt crisis prevention and resolution.

52. What used to be target 8.D, "Deal comprehensively with the debt problems of developing countries", of Millennium Development Goal 8, became the broader target 17.4 of Sustainable Development Goal 17: "Assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress". To track progress on that target, the Inter-Agency and Expert Group on Sustainable Development Goal Indicators recommended an indicator measuring "debt service as a percentage of export of goods and services" (see E/CN.3/2016/2/Rev.1). As explained below, the Independent Expert holds the view that the methodology used to determine long-term debt sustainability in the 2030 Agenda for Sustainable Development should take into consideration the human rights obligations of States and the financing needs for attaining the 17 Sustainable Development Goals. Debt or debt service cannot be said to be sustainable if the amounts needed to pay back the debt would reduce the fiscal space of States so decisively that insufficient funds would remain to protect core economic, social and cultural rights or to ensure progress in attaining the Goals. Unfortunately, the proposed indicator will not be able to track whether that would be the case.

Basic Principles on Sovereign Debt Restructuring Processes

53. Over the last decades, a number of legal principles have emerged in sovereign debt restructuring practice that have been identified, systematized and consolidated[14] by the General Assembly in September 2015 when it adopted the Basic Principles on Sovereign Debt Restructuring Processes in its resolution 69/319. Based on the principles identified earlier by an UNCTAD working group,[15] the Basic Principles propose an incremental approach to sovereign debt workouts that relies on the continuous, progressive development of sovereign debt restructuring practice.

54. Of major importance is that the Basic Principles affirm explicitly that the principle of sustainability includes respect for human rights. Lenders and borrowers and other relevant stakeholders are now invited to further develop and improve their practices in line with the Principles.

55. One of the most important contributions of that incremental approach is to put law and legal theory at the centre of the debate on debt workouts that has in past

[14] See the forthcoming 2016 special issue of the *Yale Journal of International Law* in which a number of scholars reflect on the economic and legal implications of the Basic Principles on Sovereign Debt Restructuring Processes.

[15] UNCTAD, "Sovereign debt workouts: going forward. Roadmap and guide". Available from http://unctad.org/en/PublicationsLibrary/gdsddf2015misc1_en.pdf.

decades been dominated by economic thinking.[16] Law — human rights law, most prominently — matters in debt issues. For example, the scope and contents of the principle of debt sustainability, and the role of human rights law in contributing to the understanding of what level of debt can be considered as socially sustainable, might explain why holdout litigation encounters a robust policy response.[17] The need to incorporate human rights into existing frameworks for debt sustainability analysis is discussed in more detail below.

56. As the incremental approach implies a long-term continuous process of crystalizing, developing and improving practices based on legal principles, it also needs to draw lessons from practical experiences. Therefore, the General Assembly might consider setting up a data registry for debt restructurings and a reporting system on the implementation of the Basic Principles on Sovereign Debt Restructuring Processes. That system could mainly aimed at identifying best practices and mutual learning.

Fourteenth United Nations Conference on Trade and Development

57. The forthcoming outcome document of the fourteenth session of the United Nations Conference on Trade and Development, held in Nairobi from 17-22 July 2016, highlighted that there was scope for further work with a view to facilitating fair burden-sharing, improving predictability and promoting an orderly, timely and efficient restructuring that respected the principles of shared responsibility and was conducive to rapid restoration of public debt sustainability, while preserving access to financing resources under favourable conditions. The incremental approach based on legal principles seems to be in line with that diagnosis and legal strategy.

58. The Conference underlined the importance of public debt management to prevent and pre-empt financial and debt crises in order to address growing concerns about external debt sustainability and recognized the need for a central data registry covering information on debt restructurings, as suggested in the previous paragraphs.

59. The Independent Expert regrets that the outcome document did not mention the need for a debt workout mechanism and that the Conference was not able to agree on strengthening the mandate of UNCTAD, including in the field of taxation, tax avoidance and tax evasion, as States had committed to doing in paragraph 38 of the Addis Ababa Action Agenda.

C. New global wave of austerity and debt vulnerabilities challenging progress on human rights

60. Austerity measures implemented to reduce public debt in highly developed countries such as Greece, Iceland, Ireland, Latvia, the United Kingdom of Great Britain and Northern Ireland and other European countries have been a concern to

[16] Juan Pablo Bohoslavsky and Matthias Goldmann, "Guest editor's foreword", *Yale Journal of International Law*, 2016 (forthcoming).

[17] See Michael Riegner, "Legal content and consequences of sustainability as a principle in sovereign debt restructuring", and Bohoslavsky and Goldmann, "An incremental approach to sovereign debt restructuring: sovereign debt sustainability as a principle of public international law", *Yale Journal of International Law*, 2016 (forthcoming).

the Independent Expert and international human rights mechanisms, as such fiscal consolidation measures have the potential to undermine the enjoyment of economic and social rights.[18] However, that should not lead to the erroneous perception that debt vulnerabilities in developing countries have ceased to exist, or that austerity policies have been limited to the highly developed world.

61. On the contrary, based on IMF government spending projections, a new global wave of austerity policies is currently taking root in an effort to reduce budget deficits or keep public debt under control. Cutbacks of public expenditures are expected in 132 countries in 2016 and will hover around that level until 2020. On average, 45 high-income countries and 81 developing countries will be affected. According to a study co-published by the International Labour Organization (ILO), planned adjustment measures include the reduction or elimination of subsidies, including on fuel, agriculture and food products (in 132 countries); wage bill cuts/caps (in 130 countries); rationalizing and further targeting of safety nets (in 107 countries); pension reforms (in 105 countries); labour market reforms (in 89 countries) and health-care reforms (in 56 countries). East Asia and the Pacific, along with the Middle East and North Africa, are the regions forecasted to undergo the most severe cuts.[19]

62. The Independent Expert wishes to point out that, on 24 June 2016, the Committee on Economic, Social and Cultural Rights published a statement on "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights".[20] The statement responded to the fact that States have frequently been unable to comply with their obligation to fully realize the rights enshrined in the Covenant owing to the adoption of fiscal consolidation programmes, including structural adjustment programmes and austerity programmes, as a condition for obtaining loans. Through the statement, the Committee intended to provide guidance to borrowing and lending States, as well as to international organizations and international financial institutions, as to the scope of their obligations under the Covenant in such situations.

63. In the statement, the Committee underlined that any conditions attached to a loan that would imply an obligation on a borrowing State to implement unjustifiable retrogressive measures in the area of economic, social and cultural rights would result in a violation of the Covenant. According to the Committee, both borrowing States and lenders were required to carry out human rights impact assessments prior to the provision of loans concerned, in order to ensure that the conditionalities did not disproportionately affect economic, social and cultural rights, and did not lead to discrimination. Retrogressive measures should only be taken if they were unavoidable, necessary and proportionate and if any other policy would be more detrimental to economic, social and cultural rights. They should furthermore only

[18] See, for example, the following reports by the Independent Expert and his predecessor: A/HRC/23/37/Add.1 (Latvia), A/HRC/25/50/Add.1 and A/HRC/31/60/Add.2 (Greece), and A/HRC/28/59/Add.1 (Iceland). See also reports of the United Nations High Commissioner for Human Rights (E/2013/82); the Independent Expert on the question of human rights and extreme poverty (A/HRC/17/34 and A/HRC/17/34/Add.2 (Ireland)); and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/25/54/Add.2 (United Kingdom)).

[19] See Isabel Ortiz et al., *The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries* (Geneva, ILO, 2015), p. iii.

[20] Available from ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx.

remain in place as they were necessary, not result in discrimination and mitigate inequalities, ensure that the rights of disadvantaged and marginalized individuals and groups were not disproportionately affected and not affect the minimum core content of the rights protected under the Covenant.

64. The Independent Expert welcomes the statement of the Committee clarifying further the obligations of borrowing States and lenders under the International Covenant on Economic, Social and Cultural Rights. He also notes that the statement confirmed several key principles contained in the guiding principles on foreign debt and human rights.

65. The Independent Expert would like to indicate that he is planning to develop more detailed practical guidance on how borrowing States and lenders, including international financial institutions, could undertake meaningful and robust human rights impact assessments based on existing international human rights standards and the principles outlined in the recent statement of the Committee.

66. While tools for conducting human rights impact assessments have increased, there is still a lack of practical guidance with regard to how to carry out ex ante human rights impact assessments of structural adjustment and financial consolidation policies. Such guidance would be helpful for a larger audience, including officials in public and international financial institutions, national human rights institutions or members of civil society organizations. There is evidence that human rights harm caused by economic reform policies can be avoided, or at least significantly reduced, by using a policy design based on human rights principles and effective monitoring and accountability mechanisms.

67. Overall, external debt levels of developing and transitional economies have displayed a rising long-term trend. With the exception of Africa, where a larger number of heavily indebted poor countries benefited from debt reduction programmes, all other regions in 2013 exhibited a significantly higher debt stock than in the 1990s. While nominal debt levels have risen sharply since the 2008 global financial crisis, the ratio of external debt to gross national income (GNI) declined from the late 1990s to 2008. However, that trend has come to a halt. South Asian, Latin American and transitional economies in particular have resorted to increased private borrowing.[21] A recent UNCTAD report on debt dynamics and development finance in Africa noted that "while Africa's current external debt ratios currently appear manageable, their rapid growth in several countries is a concern and requires action if a recurrence of the African debt crisis of the late 1980s and the 1990s is to be avoided".[22]

68. As of April 2016, debt sustainability analyses carried out by IMF and the World Bank in 67 low-income countries show that 3 countries were in debt distress (Grenada, the Sudan and Zimbabwe), 15 countries were at high risk of debt distress, while 26 countries were considered to be at moderate risk and 13 countries were at low risk.[23] Between April 2015 and April 2016 the proportion of developing countries at low risk of debt distress shrank from 30 per cent to 22 per cent, while

[21] *Trade and Development Report 2015* (United Nations publication, Sales No. E.15.II.D.4) pp. 120-130.

[22] *Economic Development in Africa Report 2016: Debt Dynamics and Development Finance in Africa* (United Nations publication, Sales No. E.16.II.D.3), p. 2.

[23] See imf.org/external/Pubs/ft/dsa/DSAlist.pdf (list as at 7 April 2016).

more countries have been classified to be at moderate or high risk of debt distress.[24] A report monitoring, on an annual basis, the indebtedness in developing countries, including emerging economies, found critical debt problems in 108 countries. The assessment along five different debt indicators found 234 negative changes and just 127 positive changes for the entire set of countries monitored.[25]

69. New debt sustainability analyses carried out in relation to Cameroon and Dominica reclassified them from moderate to high risk of debt distress. In the case of Dominica, the negative development can to a large extent be attributed to Storm Erika at the end of August 2015, which generated losses amounting to 96 per cent of the island's annual GDP.[26] Dominica did not benefit from debt relief under the new IMF Catastrophe Containment and Relief Trust, as only developing nations that have been impacted by natural disasters deemed to exceed more than 100 per cent of GDP can qualify for debt relief.

70. From 2006 to 2014, lending to low-income countries more than tripled. Reduced bilateral lending by countries that are part of the Organization for Economic Cooperation and Development was compensated by loans from emerging market-country creditors, such as Brazil, China and India, and by increased lending on international capital markets. In middle-income countries, more expensive market-based financing was accessed. In 1995, concessional financing had a share of about 25 per cent of the debt portfolio in middle-income countries; such loans today account for less than 10 per cent.[27]

71. Bonds have become a preferred avenue for development financing. From 2004 to 2013, 23 additional countries started to use bonds for the first time, and the share of developing countries' external long-term debt in the form of public and publicly guaranteed bonds reached 41.5 per cent in 2014.[28] Recently, bonds have increasingly been issued by developing countries to cover recurrent expenditures or compensate for reduced revenues from commodity exports. While the diversification of developing financing and increased access to capital markets can be seen as a positive development, risks have increased.

72. A number of developing economies could encounter growing difficulties in servicing their debts over the coming years, as historically low interest rates in the United States are likely to be gradually increased over the next few years, while export opportunities to developed countries remain subdued. The rapid rise of external private debt runs the danger of repeating a pattern seen prior to the Latin American crisis of the 1980s and the Asian crisis of the 1990s, with private liabilities ending up on public sector balance sheets.

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[24] See http://erlassjahr.de/allgemein/ueberschuldungsrisiken-in-armen-laendern-steigen-dramatisch-iwf/ (in German).

[25] *Schuldenreport 2016*, p. 16. Available from http://erlassjahr.de/wordpress/wp-content/uploads/2016/03/Schuldenreport-2016.pdf (in German).

[26] IMF, Country Report No. 16/244, Dominica, "Statement by Mr. James Haley, Executive Director for Dominica, and Messrs. Michael McGrath, Alternate Executive Director, and Niall Feerick, Advisor to the Executive Director", p. 70. Available from imf.org/external/pubs/ft/scr/2016/cr16244.pdf.

[27] *Schuldenreport 2016*, p. 21.

[28] Anastasia Guscina, Guilherme Pedras and Gabriel Presciuttini, "First-time international bond issuance — new opportunities and emerging risks", IMF working paper 14/127, p. 4. Available from imf.org/external/pubs/ft/wp/2014/wp14127.pdf; World Bank, *International Debt Statistics 2016* (Washington, D.C.), p. 19.

73. Interest rates are currently at historical lows, but that may change. A significant change in interest rates may cut off countries from future credit supply and pose significant challenges for rolling over maturating public debt. In addition, the experience of the past few decades shows that debt financing can reverse suddenly, sometimes as a result of contagion, and trigger external debt crises. Steep currency depreciations, banking difficulties, corporate bankruptcies and job losses can quickly follow, prompting public sector interventions to contain the crises, such as bailouts, emergency financing and countercyclical measures. It is from that sequence that external debt crises often turn into crises in public finances.

74. Small island developing States are one group of developing countries that appear at particular risk of debt distress. Many of those countries have economies that are not very diversified, have been exposed to natural disasters and are particularly vulnerable to the impacts of global climate change. In 2013, debt ratios of small island developing States stood, on average, at 64.3 per cent compared with 34.4 per cent for developing countries as a whole. In the Caribbean, debt ratios are higher still. As many Caribbean countries are classified as middle-income countries, they do not have access to concessional finance. Public debt levels amounted on average to above 70 per cent of GDP in 2014 and their total debt service payments averaged 25 per cent of government revenue between 2011 and 2014.[29] High debt ratios and debt servicing commitments have resulted in the inability of those economies to employ countercyclical fiscal policy and strengthen social safety nets, impairing progress in the realization of economic, social and cultural rights.

75. The Independent Expert therefore supports proposals to address the unsustainable debt burden of small island developing States through, inter alia, climate adaptation swaps that would facilitate investment in climate adaptation initiatives and green industries and strengthen the resilience of those countries against natural disasters. For the Caribbean region, the Economic Commission for Latin America and the Caribbean has proposed that the Green Climate Fund would be used to finance a gradual write-down of 100 per cent of the Caribbean small island developing States' multilateral debt stock held at various multilateral institutions, as well as their bilateral debt.[30]

76. During the past few years, commodity-exporting developing nations have, in particular, been affected by the sudden fall of commodity prices. Prices for main export products of developing countries, such as agriculture and food products, minerals and metals and fuels, have fallen significantly since 2011 (see A/70/188). Overall primary commodity prices lost half their value from 2011 to early 2016 and it is difficult to predict whether they will recover soon.[31]

77. In addition, currencies of developing countries have depreciated compared with the United States dollar. While that may boost exports, it results in an increase of the external debt burden that must be paid back in foreign currencies. Solving

[29] Economic Commission for Latin America and the Caribbean, "Proposal on debt and climate adaptation swaps: a strategy for growth and economic transformation of Caribbean economies", 12 April 2016, p. 8. Available from http://repositorio.cepal.org/bitstream/handle/11362/40253/LCCARL492_en.pdf?sequence=1&isAllowed=y.

[30] Ibid., p. 4.

[31] IMF, All Primary Commodity Index. The index stood in 2011 at 192 points but reached a historic low of 86.4 points during the first quarter of 2016. Data available from imf.org/external/np/res/commod/Table1a.pdf.

debt problems through export-led growth may in many instances not be a viable strategy, and fail in particular in a context of low commodity prices.

78. There are also substantial risks related to an increasing trend towards domestic debt and off-balance-sheet debt. While financial markets in more developing countries have maturated to provide loans in national currency to domestic borrowers, such debt, held predominately by national banking systems, may become a liability if it cannot be repaid and result in substantial losses for banks and in banking collapses. The predominant policy choice in Europe or during the South-East Asian financial crisis in the late 1990s has been to bail out banks with large injections of money from external creditors, turning domestic debt into public and external debt. The risk remains if adequate self-insurance mechanisms are lacking, so that costs for failed banks are borne by the financial sector itself.[32]

79. Another core feature of the expanding domestic bond markets is the large presence of foreign investors in those markets, which may raise complications for debt restructurings: external and domestic debt are no longer clearly separable, in terms of their holders, currency denomination and legal governance frameworks.

80. Finally, governments have increasingly used public-private partnerships to finance infrastructure and other projects that traditionally were fully financed from public budgets. Those public-private partnerships usually cause debt-like liabilities for governments, since guarantees are usually provided to the private investors. Public-private partnerships allow governments to implement additional projects, while their costs do not appear in the current budget. Because they are off-budget, they can also be used to sideline statutory debt ceilings. In addition, they do not always appear to be more cost-effective than traditional ways of providing infrastructure and public services. The result is that many countries have more quasi-public debt than official data suggest.[33]

81. Overall the risk that debt crises will reoccur, and cause lost decades of development and undermine the realization of economic, social and cultural rights, has not disappeared.

D. Integrating human rights into debt sustainability analyses

82. Debt sustainability analyses have an important value as an early warning tool for the prevention of debt crises and are intended to ensure more responsible behaviour of borrowers and lenders. However, those analyses are currently still overwhelmingly based on a very narrow understanding of sustainability, focusing primarily on the ability of a country to pay back its public debt without having to resort to exceptional financing. According to IMF and the World Bank, debt can be regarded as sustainable if the debt can be served and would not require a major future correction in the balance of income and expenditure.[34]

[32] Bodo Ellmers, "The evolving nature of developing country debt and solutions for change" (Brussels, Eurodad, 2016).

[33] Ibid., p.11 and Maria José Romero, "What lies beneath? A critical assessment of PPPs and their impact on sustainable development" (Brussels, Eurodad, 2015).

[34] See, for example, IMF, "Modernizing the framework for fiscal policy and public debt sustainability analysis", p. 6. Available from imf.org/external/np/pp/eng/2011/080511.pdf.

83. Along those lines, debt can be considered "sustainable" as long as the State is able to serve the debt, even when at the same time significant parts of its population are starving; have no access to essential public health care, adequate housing, free primary schooling or clean drinking water and sanitation; or the State lacks the means to pay a reasonable number of public servants to ensure the functioning of public institutions, justice and the rule of law. The financial resources required for a State to be able to sustain or fulfil core human rights obligations are currently not considered when debt sustainability analyses are carried out. The result is that sometimes a much higher stock of public debt or a high level of debt service payments may be considered "sustainable" even if the State fails to comply with its core human rights obligations because it lacks the financial means to ensure their realization.

84. A more comprehensive definition of debt sustainability incorporates economic, social and environmental sustainability, meaning that debt sustainability is only achieved when debt service does not entail intolerable sacrifices for the well-being of society, does not lead to violations of economic and social rights and does not prevent the attainment of international development goals.[35]

85. Proposals for such a comprehensive understanding of debt sustainability had already surfaced in the late 1980s in discussions regarding international debt relief for highly indebted poor countries, when arguments for a "human development" or "poverty" approach towards debt sustainability were presented.[36] In 2002, during the International Conference on Financing for Development in Monterrey, Mexico, Member States expressed their commitment to that idea in paragraph 49 of the Monterrey Consensus on Financing for Development, stating that "future reviews of debt sustainability should also bear in mind the impact of debt relief on progress towards the achievement of the development goals contained in the Millennium Declaration".

86. In 2005, Kofi Annan, then Secretary-General of the United Nations, proposed in his report entitled "In larger freedom: towards development, security and human rights for all" that debt sustainability should be redefined as "the level of debt that allows a country to achieve the Millennium Development Goals and reach 2015 without an increase in debt ratios" (see A/59/2005, para. 54).

87. The Basic Principles on Sovereign Debt Restructuring Processes, adopted by the General Assembly in its resolution 69/319 in September 2015, explicitly affirm that the principle of sustainability should include respect for human rights. Furthermore, target 17.4 of Sustainable Development Goal 17 stresses the need for achieving "long-term debt sustainability", indicating that long-term economic benefits from investing into social security, educational or public health-care systems should be taken into account. Achieving long-term debt sustainability is part of the broader 2030 Agenda for Sustainable Development and should also be understood in that context. The 2030 Agenda aims to balance the three dimensions

[35] UNCTAD, "Sovereign debt workouts".

[36] See, for example, Henry Northover, Karen Joyner and David Woodward, "A human development approach to debt relief for the world's poor", Catholic Agency for Overseas Development, September 1998; European Network on Debt and Development, "Putting poverty reduction first: why a poverty approach to debt sustainability must be adopted", October 2001; and Coopération internationale pour le développement et la solidarité, "The new World Bank/IMF debt sustainability framework: a human development assessment", April 2006.

of sustainable development (economic, social and environmental) and includes the realization of human rights for all. It would therefore be timely to improve tools and methods for carrying out debt sustainability analyses to ensure that they incorporate in a more holistic manner the social and environmental dimensions of sustainability, including human rights.

88. IMF and the World Bank employ a relatively sophisticated methodology for conducting debt sustainability analyses for low-income countries and so-called market access countries, which has been revised and updated regularly to improve predictions, but so far has failed to incorporate social, environmental or human rights dimensions of sustainability.[37] Analyses currently conducted by IMF/World Bank seek to determine if a country's overall debt level would be too big to be serviceable in the future under a given set of assumptions, which includes projected fiscal and GDP growth paths. Depending upon the assumptions made, a different picture may emerge as to whether or not a country may be at risk of debt distress.

89. Formally, IMF lending is conditional upon restoration of debt sustainability, which can mean debt relief through debt restructuring or the implementation of adjustment programmes, although recently the IMF lending framework has been relaxed, partly in order to be able to lend to countries such as Greece and Ukraine that are struggling with debt levels that have widely been considered as unsustainable. It is now possible to lend to States that have undergone debt "reprofiling", which means that it is sufficient to change the payment terms of the existing debt even if the country has lost market access and its debt is only assessed to be "sustainaable but not with a high probability".[38]

90. Debt sustainability analyses are used to determinate the scope of possible IMF lending to countries facing financial stability difficulties, and they inform the mix of grants and concessional lending by the World Bank to low-income countries. In addition, they provide indications to bilateral and private lenders about the repayment capacity of a given country.

91. While international financial institutions have undertaken some analysis of the extent debt financing or debt relief may have contributed to the achievement of poverty reduction spending and the Millennium Development Goals,[39] there has to date been no deeper reflection by international financial institutions on how debt sustainability analyses should and could incorporate into their methodology human rights considerations or the financing needs for internationally agreed development goals.

92. It is the view of the Independent Expert that debt cannot be called "sustainable" if the social and human rights dimension of sustainability is ignored. Projections of repayment capacities of borrowing States need to ensure that the obligations of States to guarantee core economic, social and cultural rights to their population can be fulfilled.

[37] See IMF fact sheet, "The joint IMF-World Bank debt sustainability framework for low-income countries", 7 April 2016, available from imf.org/external/np/exr/facts/jdsf.htm; and IMF, "Staff guidance note for public debt sustainability analysis in market-access countries", 9 May 2013, available from imf.org/external/np/pp/eng/2013/050913.pdf.

[38] See IMF, "The Fund's lending framework and sovereign debt: further considerations", 9April 2015. Available from imf.org/external/np/pp/eng/2015/040915.pdf.

[39] For the latest updated assessment by IMF, see IMF, "Heavily Indebted Poor Countries (HIPC) Initiative".

93. Even on mere economic grounds, one can make a strong argument for a more comprehensive concept of debt sustainability that factors in human rights, as it is commonly accepted that properly functioning social security nets and well-functioning educational and health systems are essential to ensure long-term economic growth and development. Current debt sustainability analyses ignore potential returns from investment in human and social capital (such as spending on primary/secondary education, health and social protection), which are vital to sustained growth in the longer run. Therefore, while current frameworks for debt sustainability analyses can be viewed as a good starting point for analysis, they should be enhanced by accounting for both social and economic returns.[40]

94. The current review of the joint IMF/World Bank Debt Sustainability Framework for Low-Income Countries, initially introduced in 2005 and revised in 2012, would, in the Independent Expert's view, provide opportunities to ensure improvements. For that purpose, the Independent Expert recommends that the following issues be considered:

(a) Debt sustainability assessments should take into consideration the fiscal space needed to guarantee and ensure core economic, social and cultural rights. Rather than judging debt sustainability only on the ability to pay, analyses should also assess whether the level of debt and debt service might prevent meeting basic entitlements of rights-holders, as outlined in international human rights law;

(b) Debt sustainability assessments should also take into consideration the fiscal space States need for attaining the internationally agreed Sustainable Development Goals, including Goal 10 on reducing inequalities within and among countries. That exercise should be done, in particular, in the context of debt restructuring and cancellation in order to ensure that the domestic public resources necessary in each country for the financing of the Goals and the enjoyment of human rights are ring-fenced and can no longer be diverted to finance debt service. Civil society organizations and international organizations had already started to develop methodologies for such debt sustainability assessments after the adoption of the Millennium Development Goals;[41]

(c) There is a need to enhance the reliability of predictions and stress tests. Past experience shows that debt sustainability analyses were sometimes unreliable[42] and sometimes based on assumptions of future economic growth that were not always justified;

(d) Finally, it should be considered whether debt sustainability assessments should not be carried out by a body that is independent of creditors and debtors. IMF and the World Bank are both significant lenders and therefore have conflicts of interest. They may have incentives to be overtly positive regarding the debt prospects of countries that diligently implement their policy advice, while making more negative projections for countries that, in their view, ignore their advice.

[40] For such an argument see Isabel Ortiz et al., *Fiscal Space for Social Protection: Options to Expand Social Investments in 187 Countries* (Geneva, ILO, 2015), p. 42.

[41] See for example, papers published on that issue in collaboration with the United Nations Development Programme, available from undp.org/content/undp/en/home/librarypage/mdg.html?q=debt.

[42] See, for example, J. Schumacher and B. Weder di Mauro, "Diagnosing Greek debt sustainability: why is it so hard?" *Brookings Papers on Economic Activity*, September 2015.

IV. Conclusions and recommendations

95. In the Independent Expert's view, the international community has entered into a much more ambitious process of implementing the Sustainable Development Goals without an accompanying robust and human rights-based framework for responsible lending and borrowing and for debt workouts that would adequately and effectively respond to increased debt vulnerabilities in many countries.

96. Progress on rooting out poverty, hunger and preventable diseases should not be undermined by elevated debt service costs. However, the number of countries planning to reduce public spending in rights-relevant sectors, such as public health care and social security and pension systems, has increased. More worrisome is the fact that a new wave of austerity policies will not only affect highly developed countries. Debt service obligations are once again reducing the fiscal space for the realization of binding international human rights standards in several developing countries, and also the right to development.

97. Falling commodity prices, the depreciation of currencies of developing countries against the United States dollar and an unprecedented boom of bond issuances by developing countries have increased the risk of debt distress. Interest hikes in international financial markets, increasing levels of domestic debt and off-balance-sheet liabilities could easily trigger a new wave of debt crises in developing countries if borrowers and lenders do not resort to more responsible behaviour.

98. While past international debt relief for heavily indebted countries has contributed to increased spending on poverty reduction, international debt relief has not been able to spill over into more sustainable progress in the realization of economic, social and cultural rights or the attainment of international development goals. Debt relief alone, while important, has been insufficient to cover the overall financing needs of those countries to make more significant progress in terms of human rights. In addition to strengthening national resource mobilization, a holistic framework for debt relief remains essential to ensure that international efforts and support in attaining the Sustainable Development Goals are not undermined by unsustainable debt.

99. The Independent Expert recommends that States; United Nations bodies, agencies and entities; and international financial institutions:

(a) Set up a database on debt restructurings and a reporting system for implementing the Basic Principles on Sovereign Debt Restructuring Processes. The system should mainly aim at identifying good practices and at enhancing mutual learning based on experiences from different debt restructuring processes;

(b) Ensure that monitoring mechanisms of the United Nations track government spending on Sustainable Development Goals and spending on sectors relevant to the realization of economic, social and cultural rights in all countries. The monitoring mechanisms should also track how much government spending is devoted to public debt service. That will also require

enhancing the transparency of public budgets to ensure that Goal-related expenditures can be better identified on a regular basis;

(c) Implement the Basic Principles on Sovereign Debt Restructuring Processes, the Principles on Promoting Responsible Sovereign Lending and Borrowing of UNCTAD and the guiding principles on foreign debt and human rights, which reconcile debt obligations with human rights (see also A/70/275, paras. 33-60);

(d) Strengthen the competencies of financial supervisors and national auditing authorities to monitor adherence to principles of responsible borrowing and lending and sanction irresponsible borrowing and lending, with a view to protecting the use of available resources for the implementation of economic, social and cultural rights;

(e) Increase the transparency of public lending and borrowing through public debt registers, including registers that cover contingent liabilities such as loans to State-owned enterprises and government guarantees provided to public-private partnerships;

(f) Incorporate human rights obligations, including social and environmental sustainability standards, into official frameworks for carrying out debt sustainability analyses to ensure that debt service does not undermine the enjoyment of human rights and the attainment of the Sustainable Development Goals.